INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING APPLICATION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

THE GAMBIA

v.

MYANMAR

PRELIMINARY OBJECTIONS OF
THE REPUBLIC OF THE UNION OF MYANMAR

Annexes 33-89

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20 JANUARY 2021

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UN, ECOSOC, resolution 47 (IV), Crime of genocide, *Resolutions adopted by the Economic and Social Council during its Fourth Session from 28 February to 29 March 1947*, UN doc. E/325, 28 March 1947

Resolutions

adopted by the

Economic and Social Council

during its Fourth Session from
28 February to 29 March 1947

Résolutions

adoptées par le

Conseil économique et social

pendant sa Quatrième Session du
28 février au 29 mars 1947

UNITED NATIONS
Lake Success, New York

Freedom of Information and of the Press be composed of the following persons:

Mr. George V. Ferguson (Canada)
Mr. P. H. Chang (China)
Mr. Lev Sychrava (Czechoslovakia)
Mr. André Géraud (France)
Dr. G. J. van Heuven Goedhart (Netherlands)
Mr. A. R. Christensen (Norway)
Mr. Jose Isaac Fabrega (Panama)
Mr. Salvador López (Philippine Republic)

Mr. J. M. Lomakin (Union of Soviet Socialist Republics)
Mr. R. J. Cruikshank (United Kingdom)
Mr. Z. Chafee (United States of America)
Mr. Roberto Fontaina (Uruguay)

and further

Resolves that the functions of the Sub-Commission be:

(*a*) In the first instance, to examine what rights, obligations and practices should be included in the concept of freedom of information, and to report to the Commission on Human Rights on any issues that may arise from such examination;

(*b*) To perform any other functions which may be entrusted to it by the Economic and Social Council or by the Commission on Human Rights;

(*c*) *Resolves* that, subject to the consent of their Governments, the Sub-Commission on Prevention of Discrimination and Protection of Minorities be composed of the following persons:

Mr. William Morris Jutson McNamara (Australia)
Mr. Joseph Nisot (Belgium)
Mr. C. F. Chang (China)
Mr. Arturo Meneses Pallares (Ecuador)
Mr. Samuel Spanien (France)
Mr. Herard Roy (Haiti)
Mr. M. R. Masani (India)
Mr. Rezazada Shafaq (Iran)
Mr. Erik Enar Ekstrand (Sweden)
Mr. A. P. Borisov (Union of Soviet Socialist Republics)
Miss Elisabeth Monroe (United Kingdom)
Mr. Jonathan Daniels (United States of America)

(*d*) *Resolves* that consideration of chapter V of the report of the Commission on Human Rights, entitled "Communications concerning human rights", be deferred until its fifth session.

47 (IV). Crime of genocide

Resolution of 28 March 1947
(document E/325)

The Economic and Social Council,

Taking cognizance of the General Assembly resolution No. 96 (I) of 11 December 1946 [1]

[1] See *Resolutions adopted by the General Assembly* during the second part of its first session, pages 188, 189.

sion de la liberté de l'information et de la presse se composera des personnes suivantes:

M. Georges V. Ferguson (Canada)
M. P. H. Chang (Chine)
M. Lev Sychrava (Tchécoslovaquie)
M. André Géraud (France)
M. G. J. van Heuven Goedhart (Pays-Bas)
M. A. R. Christensen (Norvège)
M. José Isaac Fabrega (Panama)
M. Salvador López (République des Philippines)
M. J. M. Lomakin (Union des Républiques socialistes soviétiques)
M. R. J. Cruikshank (Royaume-Uni)
M. Z. Chafee (Etats-Unis d'Amérique)
M. Roberto Fontaina (Uruguay)

et, en outre,

Décide que les fonctions de la Sous-commission seront:

a) En premier lieu, d'examiner quels droits, quelles obligations et quelles pratiques devront constituer la notion de liberté de l'information, et de faire un rapport à la Commission des droits de l'homme sur les questions que pourra soulever cet examen;

b) De s'acquitter de toute autre fonction que pourra lui confier le Conseil économique et social ou la Commission des droits de l'homme;

c) *Décide* que, sous réserve du consentement des Gouvernements respectifs, la Sous-Commission pour la lutte contre les mesures discriminatoires et pour la protection des minorités se composera de:

M. William Morris Jutson McNamara (Australie)
M. Joseph Nisot (Belgique)
M. C. F. Chang (Chine)
M. Arturo Meneses Pallares (Equateur)
M. Samuel Spanien (France)
M. Herard Roy (Haïti)
M. M. R. Masani (Inde)
M. Rezazada Chafaq (Iran)
M. Erik Enar Ekstrand (Suède)
M. A. P. Borisov (Union des Républiques socialistes soviétiques)
Mlle Elizabeth Monroe (Royaume-Uni)
M. Jonathan Daniels (Etats-Unis d'Amérique)

et, en outre,

d) *Décide* de reporter à la cinquième session l'examen du chapitre V du rapport de la Commission des droits de l'homme, intitulé "Communications relatives aux droits de l'homme".

47 (IV). Crime de génocide

Résolution du 28 mars 1947
(document E/325)

Le Conseil économique et social,

Prenant acte de la résolution No 96 (I) de l'Assemblée générale, en date du 11 décembre 1946[1],

[1] Voir les *Résolutions adoptées par l'Assemblée générale* pendant la seconde partie de sa première session, pages 188 et 189.

Instructs the Secretary-General

(*a*) To undertake, with the assistance of experts in the field of international and criminal law, the necessary studies with a view to drawing up a draft convention in accordance with the resolution of the General Assembly; and

(*b*) After consultation with the General Assembly Committee on the Development and Codification of International Law and, if feasible, the Commission on Human Rights and, after reference to all Member Governments for comments, to submit to the next session of the Economic and Social Council a draft convention on the crime of genocide.

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48 (IV). Status of women

Resolutions of 29 March 1947
(document E/425)

The Economic and Social Council

Takes note of the report of the Commission on the Status of Women (document E/281/Rev. 1), and

A. *Resolves*

1. That the functions of the Commission on the Status of Women shall be defined as follows: "The functions of the Commission shall be to prepare recommendations and reports to the Economic and Social Council on promoting women's rights in political, economic, civil, social and educational fields. The Commission shall also make recommendations to the Council on urgent problems requiring immediate attention in the field of women's rights with the object of implementing the principle that men and women shall have equal rights, and to develop proposals to give effect to such recommendations";

2. That the consideration of chapter III of the report of the Commission on the Status of Women concerning the handling of communications be deferred until its fifth session;

3. That the Commission on the Status of Women be represented by its officers, the Chairman, Vice-Chairman and Rapporteur, at the sessions of the Commission on Human Rights when sections of the draft of the international bill of human rights concerning the particular rights of women are under consideration, to participate, without vote, in the deliberations thereon;

4. That the preliminary draft of the international bill of human rights be circulated to the members of the Commission on the Status of Women at the same time as it is made available to the members of the Commission on Human Rights;

5. That the Sub-Commission on the Prevention of Discrimination and the Protection of

Charge le Secrétaire général

a) D'entreprendre, avec l'aide d'experts dans le domaine du droit international et criminel, les études nécessaires en vue de rédiger un projet de convention, conformément à la résolution de l'Assemblée générale; et

b) De présenter au Conseil économique et social, à sa prochaine session, un projet de convention sur le crime de génocide, après avoir consulté la Commission de l'Assemblée générale chargée d'étudier le développement progressif du droit international et sa codification et, si possible, la Commission des droits de l'homme, et après avoir invité tous les Gouvernements Membres à exprimer leur avis sur cette question.

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48 (IV). Condition de la femme

Résolutions du 29 mars 1947
(document E/425)

Le Conseil économique et social

Prend acte du rapport présenté par la Commission de la condition de la femme (Document E/281/Rev. 1), et

A. *Décide*

1. De définir comme suit les fonctions dévolues à la Commission de la condition de la femme: "La Commission a pour fonctions de présenter des recommandations et des rapports au Conseil économique et social sur le développement des droits de la femme dans les domaines politique, économique, civique et pédagogique. La Commission formulera également des recommandations sur les problèmes présentant un caractère d'urgence dans le domaine des droits de la femme, en vue de rendre effective l'égalité de principe entre les droits de l'homme et ceux de la femme, et élaborera des propositions destinées à donner effet à ces recommandations";

2. De renvoyer à sa cinquième session l'examen du chapitre III du rapport de la Commission de la condition de la femme, qui décrit la marche à suivre à l'égard des communications;

3. De prier la Commission de la condition de la femme de se faire représenter par son bureau (c'est-à-dire sa Présidente, sa Vice-Présidente et son Rapporteur) aux séances de la Commission des droits de l'homme au cours desquelles on examinera les chapitres du projet de déclaration internationale des droits de l'homme qui traitent des droits particuliers de la femme, afin de participer, sans droit de vote, aux délibérations sur ces questions:

4. De faire communiquer l'avant-projet de déclaration des droits de l'homme aux membres de la Commission de la condition de la femme en même temps qu'aux membres de la Commission des droits de l'homme;

5. De prier la Sous-Commission pour la lutte contre les mesures discriminatoires et pour la

Annex 34

UNSG, Draft Convention on the Crime of Genocide, UN doc. E/447, 26 June 1947 [extract]

Available at:

http://undocs.org/e/447

French version available at:

http://undocs.org/fr/e/447

United Nations

ECONOMIC AND SOCIAL COUNCIL

Nations Unies

CONSEIL ECONOMIQUE ET SOCIAL

UNRESTRICTED

E/447
26 June 1947
ENGLISH
ORIGINAL: FRENCH

DRAFT CONVENTION ON THE CRIME OF GENOCIDE

This draft convention was prepared by the Secretary-General of the United Nations in pursuance of the resolution of the Economic and Social Council dated 28 March 1947.

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PART I

DRAFT CONVENTION FOR THE PREVENTION AND PUNISHMENT OF GENOCIDE

Preamble

The High Contracting Parties proclaim that Genocide, which is the intentional destruction of a group of human beings, defies universal conscience, inflicts irreparable loss on humanity by depriving it of the cultural and other contributions of the group so destroyed, and is in violent contradiction with the spirit and aims of the United Nations.

1. They appeal to the feelings of solidarity of all members of the international community and call upon them to oppose this odious crime.

2. They proclaim that the acts of genocide defined by the present Convention are crimes against the Law of Nations, and that the fundamental exigencies of civilization, international order and peace require their prevention and punishment.

3. They pledge themselves to prevent and to repress such acts wherever they may occur.

Article I

Definitions

(Protected Groups) I. The purpose of this Convention is to prevent the destruction of racial, national, linguistic, religious or political groups of human beings.

(Acts qualified as Genocide) II. In this Convention, the word "genocide" means a criminal act directed against any one of the aforesaid groups of human beings, with the purpose of destroying it in whole or in part, or of preventing its preservation or development.

Such acts consist of:

1. Causing the death of members of a group or injuring their health or physical integrity by:

/(a) group

(a) group massacres or individual executions; or

(b) subjection to conditions of life which, by lack of proper housing, clothing, food, hygiene and medical care, or excessive work or physical exertion are likely to result in the debilitation or death of the individuals; or

(c) mutilations and biological experiments imposed for other than curative purposes; or

(d) deprivation of all means of livelihood, by confiscation of property, looting, curtailment of work, denial of housing and of supplies otherwise available to the other inhabitants of the territory concerned.

2. Restricting births by:

(a) sterilization and/or compulsory abortion; or

(b) segregation of the sexes; or

(c) obstacles to marriage.

3. Destroying the specific characteristics of the group by:

(a) forced transfer of children to another human group; or

(b) forced and systematic exile of individuals representing the culture of a group; or

(c) prohibition of the use of the national language even in private intercourse; or

(d) systematic destruction of books printed in the national language or of religious works or prohibition of new publications; or

(e) systematic destruction of historical or religious monuments or their diversion to alien uses,

/destruction

destruction or dispersion of documents and objects of historical, artistic, or religious value and of objects used in religious worship.

Article II

(Punishable Offences)

I. The following are likewise deemed to be crimes of genocide:

1. any attempt to commit genocide;

2. the following preparatory acts:

(a) studies and research for the purpose of developing the technique of genocide;

(b) setting up of installations, manufacturing, obtaining, possessing or supplying of articles or substances with the knowledge that they are intended for genocide;

(c) issuing instructions or orders, and distributing tasks with a view to committing genocide.

II. The following shall likewise be punishable:

1. wilful participation in acts of genocide of whatever description;

2. direct public incitement to any act of genocide, whether the incitement be successful or not;

3. conspiracy to commit acts of genocide.

Article III

(Punishment of a Particular Offence)

All forms of public propaganda tending by their systematic and hateful character to provoke genocide, or tending to make it appear as a necessary, legitimate or excusable act shall be punished.

Article IV

(Persons Liable)

Those committing genocide shall be punished, be they rulers, public officials or private individuals.

/Article V

Article V

(Command of the Law and Superior Orders)

Command of the law or superior orders shall not justify genocide.

Article VI

(Provisions concerning Genocide in Municipal Criminal Law)

The High Contracting Parties shall make provision in their municipal law for acts of genocide as defined by Articles I, II, and III, above, and for their effective punishment.

Article VII

(Universal Enforcement of Municipal Criminal Law)

The High Contracting Parties pledge themselves to punish any offender under this Convention within any territory under their jurisdiction, irrespective of the nationality of the offender or of the place where the offence has been committed.

Article VIII

(Extradition)

The High Contracting Parties declare that genocide shall not be considered as a political crime and therefore shall be grounds for extradition.

The High Contracting Parties pledge themselves to grant extradition in cases of genocide.

Article IX

(Trial of Genocide by an International Court)

The High Contracting Parties pledge themselves to commit all persons guilty of genocide under this Convention for trial to an international court in the following cases:

1. When they are unwilling to try such offenders themselves under Article VII or to grant their extradition under Article VIII.

2. If the acts of genocide have been committed by individuals acting as organs of the State or with the support or toleration of the State.

/Article X

Article X

(International Court competent to try Genocide)

Two drafts are submitted for this section:

1st draft: The court of criminal jurisdiction under Article IX shall be the International Court having jurisdiction in all matters connected with international crimes.

2nd draft: An international court shall be set up to try crimes of genocide (vide Annexes).

Article XI

(Disbanding of Groups or Organizations Having Participated in Genocide)

The High Contracting Parties pledge themselves to disband any group or organization which has participated in any act of genocide mentioned in Articles I, II, and III, above.

Article XII

(Action by the United Nations to Prevent or to Stop Genocide)

Irrespective of any provisions in the foregoing articles, should the crimes as defined in this Convention be committed in any part of the world, or should there be serious reasons for suspecting that such crimes have been committed, the High Contracting Parties may call upon the competent organs of the United Nations to take measures for the suppression or prevention of such crimes.

In such case the said Parties shall do everything in their power to give full effect to the intervention of the United Nations.

Article XIII

(Reparations to Victims of Genocide)

When genocide is committed in a country by the government in power or by sections of the population, and if the government fails to resist it successfully, the State shall grant to the survivors of the human group that is a victim of genocide redress of a nature and in an amount to be determined by the United Nations.

/Article XIV

Article XIV

(Settlement of Disputes on Interpretation or Application of the Convention)

Disputes relating to the interpretation or application of this Convention shall be submitted to the International Court of Justice.

Article XV

(Language - Date of the Convention)

The present Convention, of which the ....., ..., ..., ... and ..... texts are equally authentic, shall bear the date of.....

Article XVI

(First Draft)

(What States may become Parties to the Convention. Ways to become Party to it)

1. The present Convention shall be open to accession on behalf of any Member of the United Nations or any non-member State to which an invitation has been addressed by the Economic and Social Council.

2. The instruments of accession shall be transmitted to the Secretary-General of the United Nations.

(Second Draft)

1. The present Convention shall be open until 31....1948 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation has been addressed by the Economic and Social Council.

The present Convention shall be ratified, and the instruments of ratification shall be transmitted to the Secretary-General of the United Nations.

2. After 1....1948 the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State that has received an invitation as aforesaid.

Instruments of accession shall be transmitted to the Secretary-General of the United Nations.

Article XVII

(Reservations) No proposition is put forward for the moment.

Article XVIII

(Coming into Force) 1. The present Convention shall come into force on the ninetieth day following the receipt by the Secretary-General of the United Nations of the accession (or.... ratifications and accession) of not less than.... Contracting Parties.

2. Accessions received after the Convention has come into force shall become effective as from the ninetieth day following the date of receipt by the Secretary-General of the United Nations.

Article XIX

(First Draft)

(Duration of the Convention) 1. The present Convention shall remain in effect for a period of five years dating from its entry into force.

2. It shall remain in force for further successive periods of five years for such Contracting Parties that have not denounced it at least six months before the expiration of the current period.

3. Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

(Second Draft)

The present Convention may be dencunced by a written notification addressed to the Secretary-General of the United Nations. Such notification shall take effect one year after the date of its receipt.

Article XX

(Abrogation of the Convention) Should the number of Members of the United Nations and non-member States bound by this Convention become

/less

less than....as a result of denunciations, the Convention shall cease to have effect as from the date on which the last of these denunciations shall become operative.

Article XXI

(Revision of the Convention)

A request for the revision of the present Convention may be made at any time by any State which is a party to this Convention by means of a written notification addressed to the Secretary-General.

The Economic and Social Council shall decide upon the measures to be taken in respect of such a request.

Article XXII

(Notifications by the Secretary-General)

The Secretary-General of the United Nations shall notify all Members of the United Nations and non-member States referred to in Article XVI of all accessions (or signatures, ratifications and accessions) received in accordance with Articles XVI and XVIII, of denunciations received in accordance with Article XIX, of the abrogation of the Convention effected as provided by Article XX and of requests for revision of the Convention made in accordance with Article XXI.

Article XXIII

(Deposit of the Original of the Convention and Transmission of Copies to Governments)

1. A copy of the Convention signed by the President of the General Assembly and the Secretary-General of the United Nations shall be deposited in the Archives of the Secretariat of the United Nations.

2. A certified copy shall be transmitted to all Members of the United Nations and to non-member States mentioned under Article __.

/Article XXIV

Article XXIV

(Registration of the Convention)

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

/PART II

ARTICLE XII

(Action by the United Nations to Prevent or to Stop Genocide)

Irrespective of any provisions in the foregoing articles, should the crimes as defined in this Convention be committed in any part of the world, or should there be serious reasons for suspecting that such crimes have been committed, the High Contracting Parties may call upon the competent organs of the United Nations to take measures for the suppression or prevention of such crimes.

In such case the said Parties shall do everything in their power to give full effect to the intervention of the United Nations.

Comments on Article XII

1. All criminal law has a preventive effect. The fact that there is a law tends to deter and prevent action by persons who might be tempted to commit a crime. Experience shows, however, that the preventive effect of threats is limited, since these do not stop certain criminals, either because their passions overwhelm their prudence or because they consider the threat of punishment illusory.

In the international field even more than in the national, it is essential to exercise constant vigilance, and preventive action must be taken, either before the harm is done or before it has assumed wide proportions, for then it takes on the nature of a catastrophe, the effects of which are to a great extent irreparable.

There is no need to expatiate on the preventive action which would be taken by the United Nations, for this is a question of the general competence of the United Nations being applied in a particular case.

It must nevertheless be pointed out that, if preventive action is to have the maximum chances of success, the Members of the United Nations must not remain passive or indifferent. The Convention for the punishment of crimes of genocide should, therefore, bind the States to do

/everything in

everything in their power to support any action by the United Nations intended to prevent or stop these crimes.

2. Mr. Pella and Mr. Lemkin thought it desirable to provide that the Secretary-General of the United Nations should have the duty of informing the competent organs of the United Nations. For various reasons, Governments might hesitate to take the initiative in submitting a question to the organs of the United Nations. In such cases, the Secretary-General, being free of the particular (and possibly perfectly legitimate) preoccupations of States, would act as a representative of the common cause and lay the matter before the organs of the United Nations.

This proposal, however, even in the opinion of its authors, raises the constitutional question whether a Convention to which not every Member of the United Nations will necessarily be a party may confer upon the Secretary-General powers or duties relating to the application of the Charter which are not already laid down by the Charter.

B. FINAL PROVISIONS*

(Settlement of disputes on interpretation or application of the Convention)

ARTICLE XIV

Disputes relating to the interpretation or application of this Convention shall be submitted to the International Court of Justice.

Comments on this article

1. Difficulties may arise regarding the operation of a Convention. A suitable method of settling them is to submit them to a third party who shall decide between the conflicting parties.

If a dispute arises regarding "the interpretation" of the Convention, i.e. regarding the meaning of its provisions, or "the application" of the Convention, i.e. if it is to be ascertained whether one of the parties has faithfully discharged his obligations, it is normal procedure for the dispute to be submitted to a judicial authority.

The International Court of Justice would appear to be the judicial authority best qualified to deal with such disputes.

Since the Convention is not intended to regulate the particular relations between States but to protect an essential interest of the international community, any dispute is a matter affecting all the parties to the Convention. Hence, such dispute should not be settled by an authority arbitrating between two or more States exclusively, for then its decision would lack any claim to be binding on other States.

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* Articles XIV-XXIV concerning final arrangements were to be drafted after the experts had stated their opinion on the Convention as a whole. As the experts had not had sufficient time to deal with them, Mr. Pella proposed that the final provisions might confidently be entrusted to one of Prof. Giraud's experience.

/The International

The International Court of Justice, on the contrary, is an organ of the United Nations established by virtue of the Charter itself; it is a court whose authority is recognized by all the Members of the United Nations, and should consequently be given jurisdiction to settle the disputes concerned.

/ARTICLE XV

Annex 35

UN, Draft Convention on Genocide, Communications received by the Secretary-General, Communication received from the United States of America, UN doc. A/401/Add.2, 30 September 1947 [extract]

Available at:

http://undocs.org/A/401/Add.2

French version available at:

http://undocs.org/fr/A/401/Add.2

United Nations | Nations Unies | UNRESTRICTED

GENERAL ASSEMBLY | ASSEMBLEE GENERALE | A/401/Add.2
18 October 1947

ORIGINAL: ENGLISH

DRAFT CONVENTION ON THE CRIME OF GENOCIDE*

COMMUNICATIONS RECEIVED BY THE SECRETARY-GENERAL

5. COMMUNICATION RECEIVED FROM THE UNITED STATES OF AMERICA

The Secretary of State of the United States of America presents his compliments to the Secretary-General of the United Nations and acknowledges the receipt of his note, dated 21 August 1947 referring to his earlier note of 7 July 1947, and has the honour to transmit, as therein requested, the comments of the Government of the United States on the Draft Convention on the Prevention and Punishment of the International Crime of Genocide.

Washington, 30 September 1947

* Document A/362.

/DRAFT

It is therefore suggested that an article be included in the Convention, reading somewhat as follows (Article VII):

"The High Contracting Parties agree to take steps, through negotiation or otherwise, looking to the establishment of a permanent international penal tribunal, having jurisdiction to deal with offenses under this Convention. Pending the establishment of such tribunal, and whenever a majority of the States party to this Convention agree that the jurisdiction under Article VIII has been or should be invoked, they shall establish by agreement an ad hoc tribunal to deal with any such case or cases.

"Such an ad hoc tribunal shall be provided with the necessary authority to indict, to try, and to sentence persons or groups who shall be subject to its jurisdiction, and to summon witnesses and demand production of papers and documents, and shall be provided with such other authority as may be needed for the conduct of a fair trial and the punishment of the guilty."

Article XI

The High Contracting Parties pledge themselves to disband any group or organization which has participated in any act of genocide mentioned in Articles I, II and III.

Comment:

Because of the possibility that members of organizations may use the organizations as tools in their endeavour to commit genocide, and the organization may thus be used unwittingly in the commission of the crime, it is thought that the draft should read (Article IX):

"The High Contracting Parties pledge themselves to cause the disbandment of any group or organization which, by the judgment of any domestic or international tribunal acting pursuant to this Convention, has been found guilty of participating in any act prohibited by this Convention."

Article XII

Irrespective of any provisions in the foregoing articles, should the crimes as defined in this Convention be committed in any part of the world, or should there be serious reasons for suspecting that such crimes have been committed, the High Contracting Parties may call upon the competent organs of the United Nations to take measures for the suppression or prevention of such crimes.

In such case the said Parties shall do everything in their power to give full effect to the intervention of the United Nations.

/Comment:

Comment:

This Article involves the competence of the United Nations to take measures for the suppression or prevention of crimes falling within the scope of the Convention. It is suggested that a more satisfactory wording of Article XII would be (renumbered Article X):

"The High Contracting Parties, who are also members of the United Nations, agree to concert their action as such members to assure that the United Nations takes such action as may be appropriate under the Charter for the prevention and suppression of genocide."

Article XIII

When genocide is committed in a country by the government in power or by sections of the population, and if the government fails to resist it successfully, the State shall grant to the survivors of the human group that is a victim of genocide redress of a nature and in an amount to be determined by the United Nations.

Comment:

It is suggested that this article is not sufficiently precise to be of value. The formulation of satisfactory procedures on this point is a matter of difficulty since while the International Court of Justice is normally the proper organ to award damages against a state, any jurisdiction which it might exercise in this case might result in conflict with a decision of the penal tribunal. It is thought that attention should be given to the problem of damages by the International Law Commission in formulating plans for a permanent international penal tribunal. (See comment under Article X). Until such tribunal is formed it is proposed to vest the ad hoc tribunal referred to in the comment under Article X with jurisdiction to award damages. This could be done by adding the following provision to the article already proposed at that point (new Article VII):

"In addition, such an ad hoc tribunal shall also be authorized to assess damages on behalf of persons found to have sustained losses or injuries as a result of the violation of this Convention by any High Contracting Party. Prior to the assessment of any such damages any State alleged to have violated the Convention, shall be given an opportunity to be heard and to submit evidence on its behalf. Each High Contracting Party agrees to pay such damages, and costs, as may be assessed against it as a result of its failure to comply with the terms of the Convention. The ad hoc tribunal shall have authority to determine the method of distribution and payment of any amounts so awarded."

/Article XIV

Article XIV

Disputes relating to the interpretation or application of this Convention shall be submitted to the International Court of Justice.

Comment:

The words "between any of the High Contracting Parties" should be inserted after the word "Disputes". Only States may be parties to cases before the Court.

Because of the jurisdiction which may be conferred upon an international tribunal, as indicated above, it seems desirable in order to prevent concurrent or conflicting jurisdiction, to add the following proviso to this Article: "provided that no dispute shall be submitted to the International Court of Justice involving an issue which has been referred to, and is pending before or has been passed upon by a tribunal referred to in Article VII."

Article XV

The present Convention, of which the....., ..., ..., ..., and ....., texts are equally authentic, shall bear the date of.....

Comment:

None.

Article XVI

(First Draft)

1. The present Convention shall be open to accession on behalf of any Member of the United Nations or any non-member State to which an invitation has been addressed by the Economic and Social Council.

2. The instruments of accession shall be transmitted to the Secretary-General of the United Nations.

(Second Draft)

1. The present Convention shall be open until 31 ... 1948 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation has been addressed by the Economic and Social Council.

The present Convention shall be ratified, and the instruments of ratification shall be transmitted to the Secretary-General of the United Nations.

2. After 1 ... 1948 the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State that has received an invitation as aforesaid.

Instruments of accession shall be transmitted to the Secretary-General of the United Nations.

/Comment:

Annex 36

UNGA, resolution 180 (II), Draft convention on genocide, UN doc. A/RES/180(II), 21 November 1947

Available at:

http://undocs.org/A/RES/180(II)

persons concerned are no longer serving on committees of, or employed on missions for, the Organization;

(*c*) The same facilities in respect of currency and exchange restrictions, and in respect of their personal baggage, as are accorded to officials of foreign governments on temporary official missions:

(ii) Privileges and immunities are granted to the experts of the Organization in the interests of the Organization and not for the personal benefit of the individuals themselves. The Organization shall have the right and the duty to waive the immunity of any expert in any case where in its opinion the immunity would impede the course of justice and can be waived without prejudice to the interests of the Organization.

ANNEX VIII

The Universal Postal Union

The standard clauses shall apply without modification.

ANNEX IX

The International Telecommunications Union

The standard clauses shall apply without modification.

180 (II). Draft convention on genocide

The General Assembly,

Realizing the importance of the problem of combating the international crime of genocide;

Reaffirming its resolution 96(I)[1] of 11 December 1946 on the crime of genocide;

Declaring that genocide is an international crime entailing national and international responsibility on the part of individuals and States;

Noting that a large majority of the Governments of Members of the United Nations have not yet submitted their observations on the draft convention on the crime of genocide prepared by the Secretariat[2] and circulated to those Governments by the Secretary-General on 7 July 1947;

Considering that the Economic and Social Council has stated in its resolution of 6 August 1947[3] that it proposes to proceed as rapidly as possible with the consideration of the question of genocide, subject to any further instructions which it may receive from the General Assembly,

Requests the Economic and Social Council to continue the work it has begun concerning the suppression of the crime of genocide, including the study of the draft convention prepared by the Secretariat, and to proceed with the completion of a convention, taking into account that the International Law Commission, which will be set up in

[1] See *Resolutions adopted by the General Assembly* during the second part of its first session, page 144.

[2] See document E/447.

[3] See *Resolutions adopted by the Economic and Social Council* during its fifth session, resolution 77(V), page 21.

ficier de ladite immunité alors même qu'ils n'exerceraient plus de fonctions auprès des commissions de l'Organisation ou qu'ils ne seraient plus chargés de mission pour le compte de cette dernière;

c) Les mêmes facilités en ce qui concerne les réglementations monétaires et de change et en ce qui concerne leurs bagages personnels que celles accordées aux fonctionnaires des Gouvernements étrangers en mission officielle temporaire.

ii) Les privilèges et immunités sont accordés aux experts dans l'intérêt de l'Organisation et non en vue de leur avantage personnel. L'Organisation pourra et devra lever l'immunité accordée à un expert dans tous les cas où elle estimera que cette immunité gênerait l'action de la justice et qu'elle peut être levée sans nuire aux intérêts de l'Organisation.

ANNEXE VIII

Union postale universelle

Les clauses-standard s'appliqueront sans modification.

ANNEXE IX

Union internationale des télécommunications

Les clauses-standard s'appliqueront sans modification.

180 (II). Projet de convention sur le génocide

L'Assemblée générale,

Considérant l'importance du problème de la lutte contre le crime de génocide en tant que crime international;

Réaffirmant sa résolution 96(I)[1] en date du 11 décembre 1946 sur le crime de génocide;

Déclarant que le crime de génocide est un crime international qui comporte des responsabilités d'ordre national et international pour les individus et pour les Etats;

Constatant que la grande majorité des Gouvernements des Etats Membres de l'Organisation des Nations Unies n'ont pas encore présenté leurs observations sur le projet de convention préparé par le Secrétariat[2] concernant le crime de génoprojet qui leur avait été soumis par le Secrétaire générale le 7 juillet 1947;

Considérant que le Conseil économique et social a déclaré, dans sa résolution en date du 6 août 1947[3], qu'il se propose de poursuivre l'examen de la question du génocide aussi rapidement que possible, sous réserve de nouvelles instructions de l'Assemblée générale,

Invite le Conseil économique et social à poursuivre les travaux qu'il a commencés sur la répression du crime de génocide, travaux qui comprennent l'étude du projet de convention préparé par le Secrétariat, et à procéder à l'établissement du texte définitif d'une convention en tenant compte du fait que la Commission de droit

[1] Voir les *Résolutions adoptées par l'Assemblée générale* pendant la seconde partie de sa première session, page 144, 189.

[2] Voir document E/447.

[3] Voir les *Résolutions adoptées par le Conseil économique et social* pendant sa cinquième session, résolution 77(V), pages 21-22.

due course in accordance with General Assembly resolution 174(II) of 21 November 1947, has been charged with the formulation of the principles recognized in the Charter of the Nürnberg Tribunal, as well as the preparation of a draft code of offences against peace and security;

Informs the Economic and Social Council that it need not await the receipt of the observations of all Members before commencing its work, and

Requests the Economic and Social Council to submit a report and the convention on this question to the third regular session of the General Assembly.

Hundred and twenty-third plenary meeting,
21 November 1947.

international, qui sera créée en temps voulu conformément à la résolution 174(II) de l'Assemblée générale en date du 21 novembre 1947, a été chargée de formuler les principes consacrés par le Statut de la Cour de Nuremberg et d'élaborer un projet de code relatif aux crimes contre la paix et la sécurité;

Fait savoir au Conseil économique et social que point n'est besoin qu'il attende de recevoir les observations de tous les Etats Membres pour entreprendre son travail;

Invite le Conseil économique et social à présenter, à la troisième session ordinaire de l'Assemblée générale, un rapport sur cette question, ainsi que le texte de la convention susvisée.

Cent-vingt-troisième séance plénière,
le 21 novembre 1947.

Annex 37

UN, Comments by Governments on the Draft Convention prepared by the Secretariat, Communications from non-governmental organizations, UN doc. E/623, 30 January 1948, in H. Abtahi and P. Webb, *The Genocide Convention: The Travaux Préparatoires*, vol. I (2008) [extract]

The Genocide Convention

The Travaux Préparatoires

By
Hirad Abtahi and Philippa Webb

Volume One

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PREVENTION AND PUNISHMENT OF GENOCIDE

COMMENTS BY GOVERNMENTS ON THE DRAFT CONVENTION PREPARED BY THE SECRETARIAT

COMMUNICATIONS FROM NON-GOVERNMENTAL ORGANIZATIONS

TABLE OF CONTENTS

jurisdiction they exercise in their territory. The Drafts of the Secretariat, on the other hand, appear to involve a partial surrender of these traditional principles of national and international law in favour of the establishment of an international repressive jurisdiction which may result in serious danger to Members and wound national feelings that are still over-sensitive. In the course of time, it is probable that future solutions of this type will be found; but they may be premature in the present phase of international life and politics and liable to cause friction, differences and disputes between States, which might be more dangerous to the cause of common peace and harmony than the very crimes which it is intended to suppress…
The establishment of international criminal jurisdiction to deal with these cases seems to be a step that should be reserved for the future, when the circumstances of international life are more favourable and the spirit of international co-operation in the legal sphere has, as is to be hoped, made further progress.

Draft Convention – Article XI

The High Contracting Parties pledge themselves to disband any group or organization which has participated in any act of genocide mentioned in Articles I, II and III.

COMMENTS BY GOVERNMENTS

United States of America

Because of the possibility that members of organizations may use the organizations as tools in their endeavour to commit genocide, and the organization may thus be used unwittingly in the commission of the crime, it is thought that the draft should read (Article IX):
[p. 24] "The High Contracting Parties pledge themselves to cause the disbandment of any group or organization which, by the judgment of any domestic or international tribunal acting pursuant to this Convention, has been found guilty of participating in any act prohibited by this Convention."

Draft Convention – Article XII

Irrespective of any provisions in the foregoing articles, should the crimes as defined in this Convention be committed in any part of the World, or should there be serious reasons for suspecting that such crimes have been committed, the High Contracting Parties may call upon the competent organs of the United Nations to take measures for the suppression or prevention of such crimes.
In such case the said Parties shall do everything in their power to give full effect to the intervention of the United Nations.

COMMENTS BY GOVERNMENTS

1. *United States of America*

This Article involves the competence of the United Nations to take measures for the suppression or prevention of crimes falling within the scope of the Convention. It is suggested that a more satisfactory wording of Article XII would be (renumbered Article X):
"The High Contracting Parties, who are also members of the United Nations, agree to concert their action as such members to assure that the United Nations takes such action as may be appropriate under the Charter for the prevention and suppression of genocide."

2. *Haiti*

If none but the contracting parties are to report genocide committed by, or in complicity with one of them, the normal development of the Organization may be seriously prejudiced and the final establishment of international peace materially endangered.
There is also reason to believe that by granting greater freedom of action to the Secretary-General, who is directly responsible to the Assembly, the purposes of the United Nations will more easily be achieved and the progress of the Organization better ensured.
With particular reference to the reporting of genocide, this **[p. 24 ends]** Department therefore supports the opinion of Mr. Pella and Mr. Lemkin as stated on page 46 of document E/447.
The following wording is proposed:
"Irrespective of any provisions in the foregoing articles, should the crimes as defined in this Convention be committed in any part of the world, or should there be serious reasons for suspecting that such crimes have been committed, the High Contracting Parties *or the human groups affected* may call upon the competent organs of the United Nations to take measures for the suppression or prevention of such crimes.
"In such case the said Parties shall do everything in their power to give full effect to the intervention of the United Nations."

3. *Venezuela*

. . . the jurists' impression of the United Nations Draft is that it goes beyond the General Assembly's resolution of 11 December 1946. The Assembly affirmed that genocide is a crime under international law, invited the Member States to enact the necessary legislation for its prevention and punishment, and confined itself to recommending that international co-operation be organized for this purpose. It therefore appears that the spirit of this resolution was to ensure that Members should prevent and punish the hateful acts that constitute genocide and establish a principle of international co-operation

with this object in view, without demanding from Members a grave sacrifice of their sovereignty and a surrender of the criminal jurisdiction they exercise in their territory. The Drafts of the Secretariat, on the other hand, appear to involve a partial surrender of these traditional principles of national and international law in favour of the establishment of an international repressive jurisdiction which may result in serious danger to Members and wound national feelings that are still over-sensitive. In the course of time, it is probable that future solutions of this type will be found; but they may be premature in the present phase of international life and politics and liable to cause friction, differences and disputes between States, which might be more dangerous to the cause of common peace and harmony than the very crime which it is intended to suppress. Provision 3 of the Preamble, and Articles 7 and 12 of the Draft Convention are of this nature.

Draft Convention – Article XIII

When genocide is committed in a country by the government in power or by sections of the population, and if the government fails to resist it successfully, the State shall grant to the survivors of the human group that is a victim of genocide redress of a nature and in an amount to be determined by the United Nations.

COMMENTS BY GOVERNMENTS

United States of America

It is suggested that this article is not sufficiently precise to be of value. The formulation of satisfactory procedures on this point is a matter of difficulty since while the International Court of Justice is normally the proper organ to award damages against a state, any jurisdiction which it might exercise in this case might result in conflict with a decision of the penal tribunal. It is though [sic] that attention should be given to the problem of damages by the International Law Commission in formulating plans for a permanent international penal tribunal. (See comment under Article X). Until such tribunal is formed it is proposed to vest the *ad hoc* tribunal referred to in the comment under Article X with jurisdiction to award damages. This could be done by adding the following provision to the article already proposed at that point (new Article VII):

"In addition, such an *ad hoc* tribunal shall also be authorized to assess damages on behalf of persons found to have sustained losses or injuries as a result of the violation of this Convention by any High Contracting Party. Prior to the assessment of any such damages any State alleged to have violated the Convention, shall be given an opportunity to be heard and to submit evidence on its behalf. Each High Contracting Party agrees to pay such damages, and costs, as may be assessed against it as a result of

its failure to comply with the terms of the Convention. The *ad hoc* tribunal shall have authority to determine the method of distribution and payment of any amounts so awarded."

[p. 27] *Draft Convention – Article XIV*

Disputes relating to the interpretation or application of this Convention shall be submitted to the International Court of Justice.

COMMENTS BY GOVERNMENTS

United States of America

The words "between any of the High Contracting Parties" should be inserted after the word "Disputes". Only States may be parties to cases before the Court.
Because of the jurisdiction which may be conferred upon an international tribunal, as indicated above, it seems desirable in order to prevent concurrent or conflicting jurisdiction, to add the following proviso to this Article: "provided that no dispute shall be submitted to the International Court of Justice involving an issue which has been referred to, and is pending before or has been passed upon by a tribunal referred to in Article VII."

Draft Convention – Article XV

The present Convention, of which the…,…,…,…, and…, texts are equally authentic, shall bear the date of…

COMMENTS BY GOVERNMENTS

United States of America

None.

Draft Convention – Article XVI

(First Draft)

1. The present Convention shall be open to accession on behalf of any member of the United Nations or any non-member State to which an invitation has been addressed by the Economic and Social Council.
2. The instruments of accession shall be transmitted to the Secretary-General of the United Nations.

Annex 38

UN, Ad Hoc Committee on Genocide, Summary Record of the Eighth Meeting (13 April 1948), UN doc. E/AC.25/SR.8, 17 April 1948 [extract]

Available at:

http://undocs.org/E/AC.25/SR.8

United Nations
ECONOMIC AND SOCIAL COUNCIL

Nations Unies
CONSEIL ECONOMIQUE ET SOCIAL

UNRESTRICTED
E/AC.25/SR.8
17 April 1948
ENGLISH
ORIGINAL: FRENCH

AD HCC COMMITTEE ON GENCCIDE

SUMMARY RECORD OF THE EIGHTH MEETING

Lake Success, New York
Tuesday, 13 April 1948, at 2:00 p.m.

Chairman:	Mr. MAKTOS	(United States of America)
Vice Chairman:	Mr. MOROZOV	(Union of Soviet Socialist Republics)
Rapporteur:	Mr. AZKOUL	(Lebanon)
Present:	China	Mr. LIN MOUSHENG
	France	Mr. ORDONNEAU
	Poland	Mr. RUDZINSKI
	Venezuela	Mr. PEREZ-PEROZO

NOTE: Any corrections of the originals of speeches in this record should be submitted in writing at the latest within twenty-four hours to Mr. E. Delavenay, Director, Official Records Division, Room CC-119, Lake Success. Corrections should be accompanied by or incorporated in a letter, on headed notepaper, bearing the appropriate document symbol number and enclosed in an envelope marked "Urgent". Corrections can be dealt with more speedily by the services concerned if delegations will be good enough also to incorporate them in a mimeographed copy of the record.

DISCUSSION OF SECTION X OF THE "BASIC PRINCIPLES OF A CONVENTION ON GENOCIDE" SUBMITTED BY THE DELEGATION OF THE UNION OF SOVIET SOCIALIST REPUBLICS (document E/AC.25/7)

Mr. MORCZOV (Union of Soviet Socialist Republics) explained his reasons for proposing the insertion in the convention of a provision based on the principle stated in section X: (1) all cases of genocide, by their very nature, deserved the attention of the Security Council; (2) an act of genocide might necessitate the taking of measures outside the scope of an international court of justice or national courts. It would thus belong to the Security Council to decide whether measures should be taken in accordance with Chapter VI of the Charter; 3) section X provided a control of the obligations undertaken by the signatories to the convention.

Mr. Morozov thought that the document submitted by the Secretariat contained useful suggestions that might be studied when the procedure to be followed would be established. If humanity were once again to witness crimes of genocide, the adoption of the principle underlying section X would enable the United Nations to take the measures necessary for the restoration of order and the prevention of further crimes. The signatories to the convention should not only have the right to report all cases of genocide to the Security Council; but it should be their obligation to do so.

Mr. RUDZINSKI (Poland) recalled that the Committee had raised doubts as to whether it would be appropriate to refer cases of genocide to the Security Council. He did not think these doubts were founded. He regretted that the idea of an international criminal court had been accepted and did not wish to repeat the

/arguments

arguments he had already brought forward against the establishment of such a court. Nevertheless, it was clear that the principle of international jurisdiction was not at all in contradiction with the role assigned to the Security Council by section X. The function of the two organs would be complementary and not in opposition. It had been stated that the inclusion of such a provision would have no effect on the action of the Security Council; it had been said that the Security Council was empowered to take action in any case provided the questions fell within its jurisdiction; if they were not within its jurisdiction, no convention could empower the Council to act.

The arguments put forward showed that section X had not been thoroughly understood. The convention would simply contain a provision that the signatories were obliged to bring to the attention of the Security Council all cases of genocide. The signatory States would express the view that the cases of genocide might lead to friction or give rise to disputes of which the Council could be seized under Article 34 of the Charter. It was necessary to state this simply for this was the simple truth. To be convinced of this, it was sufficient to recall that genocide is basically the extermination of a national, religious or racial group in any part of the world.

Therefore, the convention should stipulate that the crime of genocide leads to international friction and endangers the maintenance of peace and security and that that could make the intervention of the Security Council necessary.

If disputes arose, the parties to the disputes would abstain from voting on decisions taken under Chapter VI, as provided in Article 27 of the Charter.

/To

To make the convention fully effective, provision had to be made for the intervention of the only organ of the United Nations invested with authority to take decisions, that is, the Security Council.

Mr. AZKOUL (Lebanon) said that if section X was intended merely to specify the obligation of signatories to bring to the attention of the Security Council all cases likely to endanger international peace and security, according to Article 34; he would have no objection to the insertion of such a provision in the convention.

Mr. MOROZOV (Union of Soviet Socialist Republics) emphasized that he considered it indispensable that all signatories should agree first of all that cases of genocide warranted the attention of the Security Council.

Mr. LIN MOUSHENG (China) reminded the members of the Committee of the arguments he had put forward at the previous meeting against the inclusion of such a provision. It was quite possible to establish a relationship between the signatories of the convention and the United Nations as a whole; if the Security Council were specifically named, all sorts of difficulties, including political ones, might arise. He cited a hypothetical case in which the British authorities an administration in charge of trusteeship might have forbidden the use of a dialect in a territory governed under such international arrangements. Now that the concept of cultural genocide had been accepted, the case could be reported to the United Nations by the parties concerned, but it was quite obvious that it was the Trusteeship Council which should take cognizance of it. There were other cases where

/the

the Economic and Social Council could be the competent authority. On the other hand, when an act of genocide endangered peace and security under Chapter VI or Chapter VII of the Charter, it belonged of course to the Security Council to take action.

He pointed out that Chapter VI provided for recommendations which would not necessarily be binding on Member States.

The representative of China preferred a provision similar to article XII of the draft convention prepared by the Secretariat; however, he expressed no opinion with regard to the text which should be inscribed in the convention.

Mr. ORDONNEAU (France) was ready to adopt section X if it was intended merely to oblige the signatories of the convention to report cases of genocide to the Security Council. It should however be made clear that the Security Council did not necessarily have to be seized of all violations of the convention. That was a matter for the Security Council itself to decide.

The CHAIRMAN, speaking as the representative of the United States of America, observed that the members of the Committee appeared to agree that the Security Council was already empowered to exercise jurisdiction in the matter, although its jurisdiction was limited to definite cases and could not be extended. Any member of the United Nations already had the right to bring to the attention of the Security Council cases falling within its jurisdiction; thus if that was the only question, section X would appear to be superfluous. Moreover, it ony specifically mentioned the Security Council, while article XII of the draft convention prepared by the Secretariat was less restrictive.

/Mr. Maktos

Mr. Maktos called attention to the draft submitted by the United States which provided that signatories which were also Members of the United Nations would agree to undertake appropriate action to repress genocide in accordance with the Charter.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that the obligation to consult with a view to taking action and the obligation to report all cases of genocide to the United Nations organ responsible for taking appropriate measures arose from two different conceptions. The formula advocated by the USSR stressed the gravity of the crime, which, Mr. Morozov was convinced, no member of the Committee under-estimated. However it ought to be stigmatized as one of the gravest crimes that could be committed against humanity so as to prevent, as drastically as possible, any attempt to repeat it.

The obligation to report all cases of genocide to the Security Council would underwrite the importance given by the signatories to the repression of genocide.

The CHAIRMAN, speaking as the representative of the United States of America, pointed out that all crimes of genocide were not of equal importance. Those which might be brought before the Security Council were so manifest that they could not be refuted and it became superfluous to report them. If, on the other hand, the jurisdiction of the Council were extended to other acts, it would be inadvisable for the Committee to take action toward this end.

The representative of the United States favoured a provision allowing cases of genocide to be referred to the various organs of the United Nations competent to deal with them.

/Mr. MOROZOV

Annex 39

UN, Ad Hoc Committee on Genocide, Summary Record of the Ninth Meeting (14 April 1948), UN doc. E/AC.25/SR.9, 21 April 1948 [extract]

Available at:

http://undocs.org/E/AC.25/SR.9

Annex 39

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CONOMIC AND OCIAL COUNCIL | CONSEIL ECONOMIQUE ET SOCIAL

E/AC.25/SR.9
21 April 1948
ENGLISH
ORIGINAL: FRENCH

AD HOC COMMITTEE ON GENOCIDE

SUMMARY RECORD OF THE NINTH MEETING

Lake Success, New York
Wednesday, 14 April 1948, at 2.20 p.m.

Chairman: Mr. MAKTOS (United States of America)

Vice-Chairman: Mr. MOROZOV (Union of Soviet Socialist Republics)

Rapporteur: Mr. AZKOUL (Lebanon)

Members:

Mr. TIN MOUSHENG	China
Mr. ORDONNEAU	France
Mr. RUDZINSKI	Poland
Mr. PEREZ-PEROZO	Venezuela

Secretariat:

Mr. SCHWELB	Deputy Director of the Division of Human Rights
Mr. GIRAUD	Secretary of the Committee

COMMUNICATION FROM THE DELEGATION OF PAKISTAN

The CHAIRMAN informed the Committee that he had received a letter dated 9 April 1948 bringing to the notice of the Committee certain acts of genocide committed against the Muslim population of India. The Pakistan delegation again drew the Committee's attention to the need to expedite the preparation of a convention for the prevention and suppression of genocide.

The Chairman instructed the Secretary of the Committee to acknowledge receipt of the Pakistan delegation's communication and to assure the latter that the Committee was fully aware of the importance and urgency of the convention which it had been charged to prepare.

NOTE: Corrections of this summary record provided for in the rules of procedure should be submitted in writing within two working days to Mr. Delavenay, Director, Official Records Division, Room CC-119, Lake Success. Corrections should be accompanied by or incorporated in a letter written on headed notepaper and enclosed in an envelope marked "Urgent" and bearing the appropriate

Annex 39

CONTINUATION OF THE DISCUSSION OF THE PROPOSAL SUBMITTED BY THE DELEGATION OF THE UNION OF SOVIET SOCIALIST REPUBLICS IN CONNECTION WITH THE BASIC PRINCIPLES OF A CONVENTION ON GENOCIDE (document E/AC.25/7)

The CHAIRMAN called on the Committee to resume the discussion of section X of the proposal submitted by the USSR delegation.

Mr. AZKOUL (Lebanon), Rapporteur, suggested that section X of the USSR proposal be amended to make quite clear that the signatories to the convention must seize the Security Council of all cases of genocide constituting a danger to peace and international security, but that other cases of genocide should be referred to other organs of the United Nations.

Mr. MOROZOV (Union of Soviet Socialist Republics) stated that agreement should first be reached on the principle of recourse to the Security Council, and that the final wording of the corresponding article in the convention should be discussed later. He reserved the right to submit a text when the time arrived to do so.

He accepted the amendment proposed by the representative of the Lebanon.

The CHAIRMAN, speaking as the representative of the United States of America, suggested that the principle of compulsory recourse to the Security Council proposed by the USSR delegation be replaced by the principle outlined in article XII of the draft Convention as proposed by the delegation of the United States of America (document E/623, page 24 of the English text), according to which:

/"The High

"The High Contracting Parties, who are also members of the United Nations, agree to concert their actions as such members to assure that the United Nations takes such action as may be appropriate under the Charter for the prevention and suppression of genocide."

Mr. Maktos pointed out to the Committee that the text quoted had the advantage of offering a wider field of action to the United Nations Organization. Moreover, concerted action by the signatories of the convention certainly bore more weight than individual applications to one of the organs of the United Nations.

Mr. AZKOUL (Lebanon), Rapporteur, observed that there was no inconsistency whatsoever between the text proposed by the United States representative and that of the USSR delegation amended in the sense previously indicated. The two texts could perfectly well stand side by side. For its own part, the Lebanese delegation was prepared to accept both texts.

Mr. LIN MOUSHENG (China) observed that a sovereign state could not be placed under the obligation of bringing charges against another state. If the signatories of the convention were to be compelled to denounce states guilty of genocide, would it not be still more to the point to oblige the accused states to answer the summons of the Security Council or any other organ of the United Nations? Mr. Lin Mousheng drew the Committee's attention to the danger of including such a stipulation in the convention, and proposed that states should be given the option, rather than placed under the obligation, of having recourse to the appropriate organ of the United Nations.

Mr. RUDZINSKI (Poland) thought on the contrary that such an obligation was necessary. It would eliminate any suspicion that

/the accusing

the accusing state acted for any reason other than the desire to ensure the observanceof the Convention on Genocide. The argument adduced by the representative of China proved, contrary to what the latter believed, that it was essential to place the contracting states under obligation to refer cases to the Security Council. A state which refused to appear in answer to such a charge would ipso facto prove its own guilt. Failure to appear would not prevent the United Nations Organization from taking the measures considered necessary.

Mr. MOROZOV (Union of Soviet Socialist Republics) thought that concerted action as advocated by the United States delegate would not constitute the best or the most effective method of ensuring the intervention of organs of the United Nations in cases of genocide or of breaches of the obligations imposed by the convention.

Replying to the Chinese representative, Mr. Morozov stated that it was by no means the intention of the USSR delegation that section X of its proposal should compel states to appear as the accusers of other states: the aim of the section was to ensure that the statutes of the convention should not remain a dead letter. The method proposed by the USSR would thus make the campaign against genocide more effective.

Mr. ORDONNEAU (France) remarked that, in practice, acts of genocide either had no effect on international peace, in which case they passed unnoticed, or they constituted a threat to peace, in which case they could not be disregarded. In the first case it was useless to refer the matter to the Security Council, which could not take cognizance of it. In the second, any member of the United Nations Organization would be able to bring the matter to the attention of the Security Council.

/On the

On the proposal of Mr. ACKOUL (Lebanon), Rapporteur, the CHAIRMAN asked for a vote on the principle of the obligation of states signatories of the convention to seize the Security Council of cases of genocide or of a breach of obligations assumed under the convention.

The Committee decided by four votes to three to discard the principle of obligatory notification.

The CHAIRMAN then put to the vote the principle of concerted action contained in the proposal submitted by himself as representative of the United States of America.

The principle of concerted action was adopted by five votes to one, with one abstention.

Mr. KUDZINSKI (Poland) explained that he had abstained from voting because he thought that the text proposed by the United States delegation did not specify to which organs of the United Nations cases of genocide should be referred.

DISCUSSION OF ARTICLES IV AND V OF THE DRAFT CONVENTION FOR THE PREVENTION AND PUNISHMENT OF GENOCIDE, PREPARED BY THE SECRETARIAT (document E/447)

Article IV

Mr. ORDONNEAU (France) stated that in the opinion of his delegation the authors of the crime of genocide and their accomplices should be punished, whether they were private individuals or rulers. He recalled that the Committee had agreed unanimously on that point.

Mr. PEREZ-PEROZO (Venezuela) stated that his delegation was not satisfied with the wording of article IV, which appeared to make a distinction between "public officials" and "rulers". In Venezuela, all rulers, whatever the importance of their functions, were considered to be state officials. All officials, including

/the head

Annex 40

UN, Ad Hoc Committee on Genocide, Draft Articles for the inclusion in the Convention on Genocide proposed by the delegation of China on 16 April 1948, UN doc. E/AC.25/9

Available at:

http://undocs.org/E/AC.25/9

Annex 40

United Nations | Nations Unies

ECONOMIC AND SOCIAL COUNCIL | CONSEIL ECONOMIQUE ET SOCIAL

UNRESTRICTED

E/AC.25/9
16 April 1948

ORIGINAL: ENGLISH

AD HOC COMMITTEE ON GENOCIDE

DRAFT ARTICLES FOR THE INCLUSION IN THE CONVENTION ON GENOCIDE PROPOSED BY THE DELEGATION OF CHINA ON 16 APRIL 1948

PREAMBLE

The High Contracting Parties declare that genocide constitutes a crime under international law, which the civilized world condemns, and which the Parties to this Convention agree to prevent and punish as hereinafter provided:

Article I

In this Convention genocide means any of the following acts directed against a national, racial, religious, or political group, for the purpose of destroying its physical existence or preventing its normal development:

1. Destroying totally or partially the physical existence of such group;

2. Subjecting such group to such conditions or measures as will cause the destruction, in whole or in part, of the physical existence of such group;

3. Destroying the cultural institutions and achievements or suppressing the language of such group.

It shall be illegal to conspire, attempt, or incite persons, to commit acts enumerated in 1, 2, and 3.

Article II

For the commission of genocide, principals and accomplices, whether they are public officials or private individuals, shall be punishable.

Article III

Genocide may be punished by any competent tribunal of the state, in the territory of which the crime is committed or the offender is found, or by such an international tribunal as may be established.

Article IV

Any Signatory to this Convention may call upon any competent organ of the United Nations to take such action as may be appropriate under the Charter for the prevention and suppression of genocide.

Annex 41

UN, Ad Hoc Committee on Genocide, Summary Record of the Twentieth Meeting (26 April 1948), UN doc. E/AC.25/SR.20, with corrigendum, UN doc. E/AC.25/SR.20/Corr.1, 4 May 1948 [extracts]

Respectively available at:

http://undocs.org/E/AC.25/SR.20 and http://undocs.org/E/AC.25/SR.20/Corr.1

United Nations
ECONOMIC AND SOCIAL COUNCIL

Nations Unies
CONSEIL ECONOMIQUE ET SOCIAL

UNRESTRICTED

E/AC.25/SR.20
4 May 1948

ORIGINAL: ENGLISH

AD HOC COMMITTEE ON GENOCIDE

SUMMARY RECORD OF THE TWENTIETH MEETING

Lake Success, New York
Monday, 26 April 1948 at 2.00 p.m.

Present:

Chairman:	Mr. J. MAKTOS	(United States of America)
Vice-Chairman:	Mr. Morozov	(Union of Soviet Socialist Republics)
Rapporteur:	Mr. Azkoul	(Lebanon)
Members:	China	Mr. Lin Mousheng
	France	Mr. Ordonneau
	Poland	Mr. Rudzinski
	Venezuela	Mr. Perez-Perozo
Secretariat:	Mr. E. Schwelb	(Assistant Director, Division of Human Rights)
	Mr. E. Giraud	(Committee Secretary)

DRAFT ARTICLES FOR INCLUSION IN THE CONVENTION ON GENOCIDE PROPOSED BY THE DELEGATION OF CHINA ON 16 APRIL 1948 (Document E/AC.25/9)

Article III (Document E/AC.25/9) (Competent Courts)

The CHAIRMAN opened the meeting by reading the amendment proposed by the United States of America to "Article III" of the Chinese proposal. With the exception of the word "genocide" which had been replaced by "any of the acts enumerated in Article III" and of the word "act" which had been substituted for "crime" the text was the same as that communicated to the Secretariat on 23 April 1948.

Note: Corrections of this summary record provided for in the rules of procedure should be submitted in writing within the prescribed period to Mr. Delavenay, Director, Official Records Division, Room CC-119, Lake Success. Corrections should be accompanied by or incorporated in a letter written on headed notepaper and enclosed in an envelope marked "Urgent" and bearing the appropriate symbol number.

/Mr. MOROZOV

Annex 41

Article IV of the Draft Articles Proposed by China (document AC.25/9) (Action by the United Nations)

Mr. MOROZOV (Union of Soviet Socialist Republics) proposed an amendment to Article IV of the Chinese draft. It did not disagree in principle with the Chinese text, but stressed the obligation for the contracting parties to communicate to the Security Council every act of genocide as well as every case of violation of the convention in order that the Council could take necessary measures in accordance with Chapter VI of the Charter.

The amendment proposed by the Union of Soviet Socialist Republics was rejected by a vote of 5 to 2.

Mr. PEREZ-PEROZO (Venezuela) proposed that the text should nevertheless mention the violation of the Convention as well as actual acts of genocide.

Mr. RUDZINSKI (Poland) said that a difficulty would arise if the amendment were adopted because violation of the Convention might have legal consequences which were not quite the same as suppression of genocide. He quoted Article 36 paragraph 2 (c) of the Statutes of the International Court of Justice.

The CHAIRMAN proposed the following wording of the Chinese text: "Any Signatory to this Convention may bring to the attention of any competent organ of the United Nations cases of violation of the Convention, and may call upon such organ to take such action as may be appropriate..."

Mr. LIN (China) said his wording was broader in scope. Those who were signatories of the Convention could draw attention to acts by non-signatories.

Mr. RUDZINSKI (Poland) said there were two separate questions involved: 1. The right of Member States to request the United Nations organs to take action to suppress Genocide; 2. The violation of the Convention. Genocide might be committed in a State who had not become a Party to the Convention and would not be technically a violation of the Convention. A clause should be added to the effect that cases of violation of the Convention might be brought to an organ of the United Nations for appropriate action.

Mr. MOROZOV (Union of Soviet Socialist Republics) proposed that the words "pledges itself" should be substituted for "May bring".

Mr. RUDZINSKI (Poland) proposed the substitution of the words "Any member of the United Nations" for "Any Signatory..."

Mr. ORDONNEAU (France) pointed out that the Convention would not apply to all members of the United Nations.

Mr. LIN (China) supported by the CHAIRMAN, said non-members might ratify the Convention.

/Mr. MOROZOV

Mr. MOROZOV (Union of Soviet Socialist Republics) said the question was twofold: 1. The obligation of the member under the Convention to report acts of genocide; 2. What organ should be informed of the facts and circumstances.

The proposal to substitute a more obligatory term for "may bring" having been rejected by a vote of 3 to 2 with 2 abstentions and likewise the proposal to change "signatory" to "Member", by a vote of 5 to 1 with 1 abstention, the Chinese text of "Article IV" as amended by the representative of POLAND and supported by the representative of VENEZUELA, was adopted by a vote of 6 with 1 abstention, to read: "Any Signatory to this Convention may bring to the attention of any competent organ of the United Nations any cases of violation of the Convention to take such action as may be appropriate under the Charter for the prevention and suppression of genocide".

The meeting adjourned at 4.30 p.m. until 4.45 p.m.

THE POLISH PROPOSAL ON EXTRADITION

Mr. LIN (China) supported the Polish proposal.

The CHAIRMAN supported the text with the words "a ground for" substituted for "a cause", with the substitution of "each High Contracting Party" for "The High Contracting Parties...", "The acts enumerated in Article III" for "Genocide" in the first paragraph, and "in such cases" for "in cases of genocide" in the second paragraph.

Mr. PEREZ-PEROZO (Venezuela) proposed that "the laws" should be amended to read "its legislation".

Mr. RUDZINSKI (Poland) agreed with the proposed amendments.

The text of the Polish proposal as amended by the United States of America and Venezuela was adopted unanimously to read as follows:

"The High Contracting Parties declare that the acts enumerated in Article III shall not be considered as political crimes and therefore shall be a ground for extradition.

"Each High Contracting Party pledges itself to grant extradition in such cases in accordance with its legislation and treaties in force."

SECRETARIAT DRAFT CONVENTION (documents E/447 and E/623)

Article XIV of the Secretariat Draft Convention
(Settlement of disputes concerning the interpretation of the Convention by the International Court of Justice)

The proposal to reconsider a previous decision regarding the banning of organizations was rejected by a vote of 3 to 2 with 2 abstentions.

The CHAIRMAN read the comments by the United States of America on page 27 of document E/623. A case should go before the International Court only after it had been disposed of by the domestic court. It would be more

/consistent

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ECONOMIC AND SOCIAL COUNCIL | CONSEIL ECONOMIQUE ET SOCIAL

UNRESTRICTED

E/AC.25/SR.20/Corr.1
14 May 1948

ORIGINAL: ENGLISH

AD HCC COMMITTEE ON GENOCIDE

CORRIGENDUM TO THE SUMMARY RECORD OF THE TWENTIETH MEETING

Lake Success, New York
Monday, 26 April 1948, at 2 p.m.

The following amendments should be made on pages 3, 5, 6 and 7:

Page 3, lines 18 and 19: delete "...or by such...in the future" and substitute "...or by a competent international tribunal."

Page 3, line 28: After the words "United States of America" insert "(E/AC.25/SR.8, page 13)".

Page 5, lines 10 - 14: Delete "Any signatory....genocide" and substitute "Any signatory of this Convention may call upon any competent organ of the United Nations to take such action as may be appropriate under the Charter for the prevention and suppression of genocide. Any signatory to this Convention may bring to the attention of any competent organ of the United Nations any case of violation of this Convention."

Page 5, lines 40 - 41: Delete "A case .....domestic court. It would be more....", and on

Page 6, line 1: Delete the whole line "consistent....tribunal."

Page 7, line 25: Substitute "under" for "against."

Page 7, line 29: Substitute "under" for "against."

Annex 42

UN, Ad Hoc Committee on Genocide, Draft Convention on Prevention and Punishment of the Crime of Genocide, UN doc. E/AC.25/12, 19 May 1948 [extract]

Available at:

http://undocs.org/E/AC.25/12

United Nations | Nations Unies

ECONOMIC AND SOCIAL COUNCIL | CONSEIL ECONOMIQUE ET SOCIAL

UNRESTRICTED

E/AC.25/12
19 May 1948

ORIGINAL: ENGLISH
FRENCH

AD HOC COMMITTEE ON GENOCIDE

(5 April - 10 May 1948)

DRAFT CONVENTION ON PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE*

(Drawn up by the Committee)

PREAMBLE

THE HIGH CONTRACTING PARTIES,

declaring that genocide is a grave crime against mankind which is contrary to the spirit and aim of the United Nations and which the civilized world condemns;

having been profoundly shocked by many recent instances of genocide;

having taken note of the fact that the International Military Tribunal at Nurnberg in its judgment of 30 September - 1 October 1946 has punished under a different legal description certain persons who have committed acts similar to those which the present Convention aims at punishing, and

being convinced that the prevention and punishment of genocide requires international co-operation,

HEREBY AGREE TO PREVENT AND PUNISH THE CRIME AS HEREINAFTER PROVIDED:

SUBSTANTIVE ARTICLES -

Article I

(Genocide: a crime under international law)

Genocide is a crime under international law whether committed in time of peace or in time of war.

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* The marginal notes placed before the articles which indicate the subject dealt with therein are not intended to be part of the Convention. They may be of some use, during the preparatory work concerning the Convention, to help the reader to trace the origin of articles to which, in some cases, a new number has been given.

/Article II

Article V

(Persons liable)

Those committing genocide or any of the other acts enumerated in Article IV shall be punished whether they are Heads of State, public officials or private individuals.

Article VI

(Domestic legislation)

The High Contracting Parties undertake to enact the necessary legislation in accordance with their constitutional procedures to give effect to the provisions of this Convention.

Article VII

(Jurisdiction)

Persons charged with genocide or any of the other acts enumerated in Article IV shall be tried by a competent tribunal of the State in the territory of which the act was committed or by a competent international tribunal.

Article VIII

(Action of the United Nations)

1. A party to this Convention may call upon any competent organ of the United Nations to take such action as may be appropriate under the Charter for the prevention and suppression of genocide.

2. A party to this Convention may bring to the attention of any competent organ of the United Nations any case of violation of this Convention.

Article IX

(Extradition)

1. Genocide and the other acts enumerated in Article IV shall not be considered as political crimes and therefore shall be grounds for extradition.

2. Each party to this Convention pledges itself to grant extradition in such cases in accordance with its laws and treaties in force.

Article X

(Settlement of the disputes by the International Court of Justice)

Disputes between the High Contracting Parties relating to the interpretation or application of this Convention shall be submitted to the International Court of Justice provided that no dispute shall be submitted to the International Court of Justice involving an issue which has been referred to and is pending before or has been passed upon by competent international criminal tribunal.

/FINAL CLAUSES -

Annex 43

UN, Report of the Ad Hoc Committee on Genocide, 5 April to 10 May 1948, UN doc. E/794, 24 May 1948 [extract]

Available at:

http://undocs.org/E/794

French version available at:

http://undocs.org/fr/E/794

United Nations *Nations Unies*

ECONOMIC AND SOCIAL COUNCIL **CONSEIL ECONOMIQUE ET SOCIAL**

UNRESTRICTED

E/794
24 May 1948
ENGLISH
ORIGINAL: FRENCH

AD HOC COMMITTEE ON GENOCIDE

(5 April - 10 May 1948)

REPORT OF THE COMMITTEE

AND

DRAFT CONVENTION DRAWN UP BY THE COMMITTEE

(Dr. Karim AZKOUL - Rapporteur)

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Annex 43

ARTICLE VIII

(Action of the United Nations)

"1. A party to this Convention may call upon any competent organ of the United Nations to take such action as may be appropriate under the Charter for the prevention and suppression of genocide.
2. A party to this Convention may bring to the attention of any competent organ of the United Nations any case of violation of this Convention."

Observations

This Article was discussed at length when the Committee considered questions of principle, and it was discussed again when the Articles of the Convention were being drafted.

The representative of the Union of Soviet Socialist Republics proposed the following text:

"The High Contracting Parties undertake to report to the Security Council all cases of genocide and all cases of a breach of the obligations imposed by the Convention so that the necessary measures may be taken in accordance with Chapter VI of the United Nations Charter."

In this connection there was disagreement on two main points:

1. Should provision be made for the intervention of a specific organ of the United Nations, in this case the Security Council, or should no organ be mentioned?

It was urged in favour of naming the Security Council that the commission of genocide was a grave matter likely to endanger world peace and therefore one which justified intervention by the Security Council, and that only the Security Council was capable of taking effective action to remedy the situation, that is to say to stop the commission of genocide.

It was argued against this point of view that, although the Security Council appeared to be the organ to which governments would most frequently wish to apply, it was undesirably to rule out the General Assembly, the Economic and Social Council or the Trusteeship Council. In some cases it would be of advantage to call on the General Assembly because it directly expressed the opinion of all Members of the United Nations, and because its decisions were taken by a majority vote with no risk of the right of veto preventing a decision.

/The

The advocates of naming the Security Council replied that they did not exclude the possibility of referring the question to the General Assembly or adopting any other measures which the Security Council may deem necessary.

2. Should it be made compulsory for parties to the Convention to lay the matter before the organs of the United Nations or should they be merely given the right to do so?

It was argued in favour of compulsion that the gravity of genocide justified compulsory reference to the Security Council which organ would be free to assess the importance of the cases submitted to it and to take the necessary steps for the prevention and suppression of genocide. It was further pointed out that in accordance with the Charter, Members of the United Nations were already entitled to refer questions to that Organization and that nothing would be gained by mentioning this right in Article VIII of the Convention.

It was argued against this view that if a serious case of genocide occurred, it would certainly be submitted to the United Nations and that it was unnecessary to make into an obligation a right the exercise of which should be left to the judgment of governments.

The principle of compulsory notification was rejected by three votes to two with two abstentions. (Twentieth meeting - Monday, 26 April 1948 - afternoon).

Having rejected by five votes to two (Twentieth meeting - Monday, 26 April 1948 - afternoon) the text submitted by the representative of the Union of Soviet Socialist Republics, the Committee had to consider the text submitted by the representative of China which had been adopted as the basis of discussion.

This text with some amendments was adopted by five votes to one with one abstention. (Twentieth meeting - Monday, 26 April 1948 - afternoon) and became the first paragraph of the Article.

A second paragraph, adopted by six votes with one abstention was added. (Twentieth meeting - Monday, 26 April 1948 - afternoon).

The Article as a whole was adopted by five votes to one with one abstention.

/The representative

Annex 43

The representative of the Union of Soviet Socialist Republics made a declaration with regard to his negative vote.*

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* Declaration of the representative of the Union of Soviet Socialist Republics:

> "In order really to combat genocide it is essential that the signatories to the Convention should undertake the obligation to report to the Security Council all cases of genocide and all cases of a breach of the obligations imposed by the Convention, so that the necessary measures may be taken in accordance with Chapter VI of the United Nations Charter. An appeal precisely to the Security Council would be fully in accordance with the gravity of the question of genocide.
>
> The representative of the Union of Soviet Socialist Republics considers that Article VIII should read as follows in the Convention:
>
> 'The High Contracting Parties undertake to report to the Security Council all cases of genocide and all cases of a breach of the obligations imposed by the Convention so that the necessary measures may be taken in accordance with Chapter VI of the United Nations Charter.'"

/ARTICLE IX

ARTICLE X

(Settlement of disputes by the International Court of Justice)

"Disputes between the High Contracting Parties relating to the interpretation or application of this Convention shall be submitted to the International Court of Justice, provided that no dispute shall be submitted to the International Court of Justice involving an issue which has been referred to and is pending before or has been passed upon by a competent international criminal tribunal."

Observations

A member of the Committee requested that Article XIV of the Secretariat's draft* regarding the settlement of disputes relating to the interpretation or application of the Convention be re-inserted.

The representative of the Union of Soviet Socialist Republics opposed this proposal, recalling his opposition in principle to the establishing of an international court which, in his opinion, would be an infringement of the sovereignty of States and would amount to intervention in the internal affairs of the State.

Another representative, supporting the conferring of such competence on the International Court of Justice, pointed out that since the Convention elsewhere conferred competence on an international criminal tribunal (Article VII, last sentence), it was desirable to avoid any concurrent or conflicting jurisdiction.

He therefore proposed, in order to avoid disputes regarding competence, that the following formula be added to that proposed by the Secretariat:

> "....provided that no dispute shall be submitted to the International Court of Justice involving an issue which has been referred to and is pending before or has been passed upon by a competent international tribunal."

The first part of the Article conferring competence on the International Court of Justice was accepted by five votes to two.

The second part, including the proviso quoted, was accepted by four votes to one with two abstentions.

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* This Article read as follows:

> "Disputes relating to the interpretation or application of this Convention shall be submitted to the International Court of Justice."

/The Article

The Article as a whole was adopted by four votes to three.

The representative of Poland* and the representative of the Union of Soviet Socialist Republics** made a declaration with regard to their negative vote.

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* Declaration of the representative of Poland:

> "The inclusion in the Convention of the principle of an international criminal tribunal constitutes an obligation of the parties to this Convention, the contents of which are wholly unknown to them. The creation of an international criminal court whose jurisdiction could only be compulsory and not optional, is contrary to the principles on which the International Court of Justice and its Statute are based."

** Declaration of the representative of the Union of Soviet Socialist Republics:

> "Establishment of the system contemplated by Article X must inevitably lead to intervention by an international court in the trial of cases of genocide which should be heard by the national courts in accordance with their jurisdiction.
>
> The representative of the Union of Soviet Socialist Republics bases his argument on the fact that the establishment of international jurisdiction for cases of genocide would constitute intervention in the internal affairs of States and be a violation of their sovereignty.
>
> Consequently, in the opinion of the representative of the Union of Soviet Socialist Republics, Article X should be excluded."

/REJECTED ARTICLE

Annex 44

UNGA, Sixth Committee, Genocide – Draft Convention and Report of the Economic and Social Council, Union of Soviet Socialist Republics: Amendments to the draft convention (E/794), UN doc. A/C.6/215/Rev.1, 9 October 1948

Available at:

http://undocs.org/A/C.6/215/Rev.1

French version available at:

http://undocs.org/fr/A/C.6/215/Rev.1

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GENERAL ASSEMBLY | ASSEMBLEE GENERALE

A/C.6/215/Rev.1
9 October 1948
ENGLISH
ORIGINAL: RUSSIAN

Dual Distribution

Third session
SIXTH COMMITTEE

GENOCIDE - DRAFT CONVENTION AND REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Union of Soviet Socialist Republics: Amendments to the draft convention (E/794)

The Soviet delegation proposes the introduction into the draft Convention on Genocide (E/794, 24 May 1948) of the following amendments:

1. In the Preamble to the Convention:

(a) In paragraph 1, page 68 of the Russian text (page 54 of the English text) (E/794), after the words "a grave crime against mankind", add the words: "directed towards the destruction of separate human groups on racial, nationalistic or religious grounds"; in the same paragraph, after the words "... the United Nations", delete the word "and", substitute a comma, and after the words "... by the civilized world, add: "and which is a blot on the countries where such crimes, propaganda and incitement to their commission are still practised";

(b) In paragraph 2 on page 68 of the Russian text (page 54 of the English text) (E/794), after the words: "having been profoundly shocked by many recent instances of genocide", add the words: "which is organically bound up with Fascism-Nazism and other similar race 'theories' which preach racial and national hatred, the domination of the so-called higher races and the extermination of the so-called lower races";

(c) In paragraph 4 on page 68 of the Russian text (page 54 of the English text) (E/794), after the words: "... being convinced that", add the following words: "all civilized peoples are required both in peace and in war to take decisive measures"; in the same paragraph, after the words: "... for the commission of genocide", add the words: "and to suppress and prohibit the stimulation of racial, national and religious hatred and to punish severely persons guilty of inciting, committing or preparing the commission of the aforementioned crimes and that to this end..."

/2. Delete

Annex 44

2. Delete Article 1, since its subject-matter will be fully covered if the modifications to the text of the Preamble (page 69 of the Russian text and page 54 of the English text) (E/794) are accepted.

X X X

If those modifications are introduced, the Preamble to the Convention will read as follows (the additions introduced by the Soviet Union delegations are underlined):

PREAMBLE

"THE HIGH CONTRACTING PARTIES,

declaring that genocide is a grave crime against mankind directed towards the destruction of separate human groups on racial, nationalistic or religious grounds, which is contrary to the spirit and aims of the United Nations, which the civilized world condemns, and which is a blot on the countries where such crimes, propaganda and incitement to their commission are still practised;

having been profoundly shocked by many instances of genocide, which is organically bound up with Fascism-Nazism and other similar race "theories" which preach national and racial hatred, the domination of the so-called higher races and the extermination of the so-called lower races;

having taken note of the fact that the International Military Tribunal at Nuremburg in its judgments of 30 September - 1 October 1946 has punished under a different legal description certain persons who had committed acts similar to those which the Convention aims at punishing; and

being convinced that all civilized peoples are required both in peace and in war to take decisive measures for the prevention and punishment of genocide and to suppress and prohibit the stimulation of racial, national and religious hatred and to punish severely persons guilty of inciting, committing or preparing the commission of the aforementioned crimes and that to this end international co-operation is necessary;

HEREBY AGREE TO PREVENT AND PUNISH THE CRIME OF GENOCIDE AS HEREINAFTER PROVIDED.

X X X

3. From the introduction to Article II to delete the words "... political group" and "political opinion."

To delete points 1 - 4 of this Article and to substitute the following:

"i. The physical destruction in whole or in part of such groups;

ii. The deliberate creation of conditions of life aimed at the physical destruction in whole or in part of such groups."

/4. To Article

4. To Article IV to add points "e" and "f" as drafted hereunder and accordingly to call point "e" in the draft Convention point "g". The following is the proposed working of the new points "e" and "f":

"(e) The preparatory acts for committing Genocide in the form of studies and research for the purpose of developing the technique of Genocide: setting up of installations, manufacturing, obtaining, possessing or supplying of articles or substances with the knowledge that they are intended for Genocide; issuing instructions or orders and distributing tasks with a view to committing Genocide";

"(f) All forms of public propaganda (press, radio, cinema etc.) aimed at inciting racial, national or religious enmities or hatreds or at provoking the commission of acts of Genocide." (E/794, page 70 of the Russian text, page 55 of the English text).

Article V to become point 1 of that Article and to be completed by the addition of point 2 as follows: "command of the law or superior orders shall not justify genocide." (E/794, page 71 of the Russian text, page 55 of the English text).

6. In Article VI, after the words "to give effect to the provisions of this Convention...", add "... aimed at the prevention and suppression of genocide and also at the prevention and suppression of incitement of racial, national and religious hatred...", and after "... the necessary legislation in accordance with their constitutional procedures", add the words "to provide criminal penalties for the authors of such crimes". (E/794, page 71 of the Russian text, page 56 of the English text).

7. In Article VIII delete the words "or by a competent international tribunal." (E/794, page 39 of the Russian text, page 29 of the English text).

8. In Article VIII, delete points 1 and 2, and substitute the following: "the High Contracting Parties undertake to report to the Security Council all cases of genocide and all cases of a breach of the obligations imposed by the Convention so that the necessary measures may be taken in accordance with Chapter VI of the United Nations Charter." (E/794, pages 71 and 72 of the Russian text, page 56 of the English text).

9. Article X of the Convention to be deleted. (E/794, page 72 of the Russian text, pages 56 and 57 of the English text).

10. Complete the Convention by adding the following Article: "The High Contracting Parties pledge themselves to disband and prohibit any organizations aimed at inciting racial, national or religious hatred or the commission of acts of genocide".

11. In Article XII, point 1, for "General Assembly" substitute the words "Economic and Social Council".

/12. Replace

12. Replace Article XIV by the following: "the present Conven by denounced by a written notification addressed to the Secretar of the United Nations. Such notification shall take effect one after the date of its receipt."

13. In Article XVI, delete points 1 and 2 and substitute the fo "A request for the revision of the present Convention may be mad any time by any State signatory to the Convention by means of a in writing addressed to the Secretary-General. The Economic an Council will decide what action should be taken regarding such a (E/794, page 75 of the Russian text, page 58 of the English text

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Annex 45

UNGA, Sixth Committee, Genocide: Draft Convention and Report of the Economic and Social Council, United Kingdom: Further amendments to the Draft Convention (E/794), UN doc. A/C.6/236, 16 October 1948

Available at:

http://undocs.org/A/C.6/236

French version available at:

http://undocs.org/fr/A/C.6/236

United Nations | Nations Unies | UNRESTRICTED
GENERAL ASSEMBLY | ASSEMBLEE GENERALE | A/C.6/236
16 October 1948
ORIGINAL: ENGL

Dual Distribut

Third session
SIXTH COMMITTEE

GENOCIDE: DRAFT CONVENTION AND REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

United Kingdom: Further amendments to the Draft Convention (E/794)

ARTICLE IV

Amend sub-head (e) to read "deliberate complicity in any act of genocide."

ARTICLE V

Amend this Article to read as follows:

"Criminal responsibility for any act of genocide as specified in Articles II and IV shall extend not only to all private persons or associations, but also to States, Governments, or organs or authorities of the State or Government, by whom such acts are committed. Such acts committed by or on behalf of States or Governments constitute a breach of the present Convention."

ARTICLE VII

Delete this Article and substitute for it the following:

"Where the act of genocide as specified by Articles II and IV is, or is alleged to be, the act of the State or Government itself or of any organ or authority of the State or Government, the matter shall, at the request of any other party to the present Convention, be referred to the International Court of Justice whose decision shall be final and binding. Any acts or measures found by the Court to constitute acts of genocide shall be immediately discontinued or rescinded, or, if already suspended, shall not be resumed or reimposed."

Note: (a) there is no international criminal court and (b) the reference to national courts is unnecessary in view of Article VI.

ARTICLE VIII

Delete.

Note: These matters are already provided for in the Charter of the United

/ARTICLE IX

ARTICLE IX

In sub paragraph 1 substitute the phrase "for purposes of extradition" instead of the phrase "and therefore shall be grounds for extradition."

ARTICLE X

Amend this Article to read:

"In addition to the cases contemplated by Article VII of the present Convention all disputes between the High Contracting Parties relating to the interpretation or application of the Convention shall, at the request of any party to the dispute, be referred to the International Court of Justice."

Note (i) The reference to Article VII is to that Article as amended by the United Kingdom proposal above.

(ii) The last part of Article X is omitted because there is no international criminal court.

New Article to be inserted after Article XII:

"Any High Contracting Party may at any time, by notification addressed to the Secretary General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that High Contracting Party is responsible."

Articles XIV and XV

Delete these Articles.

Annex 46

UNGA, Sixth Committee, Genocide: Draft Convention and Report of the Economic and Social Council, United Kingdom: Further amendments to the Draft Convention (E/794), Corrigendum, UN doc. A/C.6/236/Corr.1, 19 October 1948

Available at:

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GENERAL ASSEMBLY | ASSEMBLEE GENERALE

A/C.6/236/Corr.1
19 October 1948

ORIGINAL: ENGLISH

Dual Distribution

Third session
SIXTH COMMITTEE

GENOCIDE: DRAFT CONVENTION AND REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

United Kingdom: Further amendments to the Draft Convention (E/794)

Corrigendum

For the whole paragraph under the heading "ARTICLE VII" in document A/C.6/236, substitute the following:

"ARTICLE VII

Delete this Article (because (a) there is no international criminal court and (b) the reference to national courts is unnecessary in view of Article VI) and substitute for it the following:

"Where the act of genocide as specified by Articles II and IV is, or is alleged to be the act of the State or Government itself or of any organ or authority of the State or Government, the matter shall, at the request of any other party to the present Convention, be referred to the International Court of Justice whose decision shall be final and binding. Any acts or measures found by the Court to constitute acts of genocide shall be immediately discontinued or rescinded and if already suspended shall not be resumed or reimpos-

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Annex 47

UNGA, Sixth Committee, Genocide: Draft Convention and Report of the Economic and Social Council, Belgium: Amendment to the United Kingdom Amendments to Articles V and VII (A/C.6/236 & 236 Corr.1), UN doc. A/C.6/252, 6 November 1948

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6 November 1948
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Third Session
SIXTH COMMITTEE

GENOCIDE: DRAFT CONVENTION AND REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Belgium: Amendment to the United Kingdom Amendments to Articles V and VII (A/C.6/236 & 236 Corr.1)

The States Parties to the present Convention shall ensure the punishment of the acts enumerated in Article IV, whether their authors are agents of the State or not.

Any dispute relating to the fulfilment of the present undertaking or to the direct responsibility of a State for the acts enumerated in Article IV may be referred to the International Court of Justice by any of the Parties to the present Convention.

The Court shall be competent to order appropriate measures to bring about the cessation of the imputed acts or to repair the damage caused to the injured persons or communities.

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Annex 48

UNGA, Sixth Committee, Genocide – Draft Convention and Report of the Economic and Social Council, Belgium and United Kingdom: Joint Amendment to article X of the draft Convention (E/794), UN doc. A/C.6/258, 10 November 1948

Available at:

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GENERAL ASSEMBLY | ASSEMBLEE GENERALE

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Third session
SIXTH COMMITTEE

GENOCIDE - DRAFT CONVENTION AND REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Belgium and United Kingdom: Joint amendment to article X of the draft Convention (E/794)

Replace article X by:

"Any dispute between the High Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including disputes relating to the responsibility of a State for any of the acts enumerated in articles II and IV, shall be submitted to the International Court of Justice, at the request of any of the High Contracting Parties."

Annex 49

UNGA, Sixth Committee, Hundred and First Meeting, Continuation of the consideration of the draft convention on genocide [E/794]: report to the Economic and Social Council [A/633] (11 November 1948), UN doc. A/C.6/SR.101

Available at:

http://undocs.org/A/C.6/SR.101

HUNDRED AND FIRST MEETING

Held at the Palais de Chaillot, Paris, on Thursday, 11 November 1948, at 8.30 p.m.

Chairman: Mr. R. J. ALFARO (Panama).

50. Continuation of the consideration of the draft convention on genocide [*E/794*]: report of the Economic and Social Council [*A/633*]

ARTICLE VIII

Mr. DIGNAM (Australia) asked for an explanation of the joint United Kingdom and Belgian amendment [*A/C.6/258*], which had been circulated at the 100th meeting, and which he found misleading in the form in which it stood. In reply to the Chairman, who pointed out that the amendment referred to article X which had not yet been discussed, Mr. Dignam pressed for an early explanation, which could be taken into account when the article was considered.

The CHAIRMAN, in introducing the discussion of article VIII, stated that there were five amendments before the Committee. An amendment by the United Kingdom [*A/C.6/236*] and another by Belgium [*A/C.6/217*] proposing the deletion of the article, a USSR amendment [*A/C.6/215/Rev.1*] proposing the deletion of article VII and the substitution of that article by a new text, a French admendment [*A/C.6/259*], which was in fact an amendment to the USSR amendment, and, finally, an amendment by Haiti [*A/C.6/249*] proposing the addition of certain words to the *Ad Hoc* Committee draft.

He suggested that a vote should first be taken on the question of deletion.

Mr. MOROZOV (Union of Soviet Socialist Republics) held that the Soviet Union amendment should be discussed first, since it proposed both deletion and the substitution of a new text, and must be regarded as the amendment furthest removed from the original. If the Soviet Union proposal were rejected, the question of deletion could then be discussed, so that delegations might vote on deletion only. If the question of deletion were discussed first, the whole question would have to be discussed for a second time.

The CHAIRMAN found it difficult to believe that a proposal for total deletion was not the furthest removed from the original proposal. He did not regard the USSR amendment as a new proposal, on the ground that the obligation to refer cases of genocide to the Security Council was not a real amendment or modification of the text of article VIII. He could, at most, allow a simultaneous discussion of the two proposals for deletion and the Soviet Union proposal. He suggested that they should deal first with the question of deletion, then with the Soviet Union amendment and finally with the Haitian amendment.

Mr. CHAUMONT (France) agreed with the Chairman's proposal that the amendments should be discussed simultaneously. He pointed out that the USSR amendment included both dele-

CENT-UNIEME SEANCE

Tenue au Palais de Chaillot, Paris, le jeudi 11 novembre 1948, à 20 h. 30.

Président: M. R. J. ALFARO (Panama).

50. Suite de l'examen du projet de convention sur le génocide [*E/794*]: rapport du Conseil économique et social [*A/633*]

ARTICLE VIII

M. DIGNAM (Australie) demande des explications au sujet de l'amendement commun du Royaume-Uni et de la Belgique [*A/C.6/258*], distribué à la 100ème séance, qui, dans sa présente forme, peut, à son avis, prêter à confusion. Répondant au Président, qui souligne que cet amendement porte sur l'article X, lequel n'a pas encore été examiné, M. Dignam insiste pour que des explications, dont on pourra tenir compte lorsque l'article viendra en discussion, soient données maintenant.

Le PRÉSIDENT, en ouvrant le débat sur l'article VIII, annonce que la Commission a été saisie de cinq amendements: l'un du Royaume-Uni [*A/C.6/236*]; un autre de la Belgique [*A/C.6/217*] demandant la suppression de l'article; le troisième de l'URSS [*A/C.6/215/Rev.1*] demandant la suppression de l'article VIII et proposant qu'on y substitue un nouveau texte; le quatrième, présenté par la France [*A/C.6/259*], qui est, en fait, un amendement à celui de l'URSS; enfin l'amendement d'Haïti [*A/C.6/249*] proposant l'addition de certains mots au projet du Comité spécial.

Le Président suggère que la Commission se prononce d'abord par un vote sur la suppression de l'article.

M. MOROZOV (Union des Républiques socialistes soviétiques) estime que l'on doit examiner d'abord l'amendement de l'Union soviétique qui propose à la fois la suppression du texte actuel et son remplacement par un nouveau texte, et qui est donc l'amendement le plus éloigné du texte original. Si la proposition de l'Union soviétique était repoussée, l'on pourrait alors discuter de la suppression de l'article, de sorte que le vote aurait lieu sur ce dernier point seulement. Si l'on discutait d'abord de la suppression, il faudrait discuter à nouveau l'ensemble de la question.

Le PRÉSIDENT a peine à admettre que l'amendement qui demande la suppression totale de l'article ne soit pas le plus éloigné de l'original. Il ne considère pas que la proposition de l'URSS soit nouvelle, car l'obligation d'en référer au Conseil de sécurité sur les cas de génocide ne constitue pas un amendement réel ou une modification du texte de l'article VIII. Tout au plus, peut-il admettre qu'on examine simultanément les deux propositions qui tendent à la suppression de l'article et celle de l'Union soviétique. Le Président propose qu'on examine d'abord la question de la suppression, puis l'amendement de l'Union soviétique et ensuite l'amendement d'Haïti.

M. CHAUMONT (France) est d'accord avec le Président pour que les amendements soient discutés simultanément. Il souligne que l'amendement de l'URSS a un double aspect: il propose

tion and substitution. If, therefore, the vote were in favour of deletion, the substitution of a new text would not be precluded.

Mr. FITZMAURICE (United Kingdom) held that in accordance with the definition given in the rules of procedure, the Soviet Union amendment was the one furthest removed from the original. The Committee should therefore begin by discussion of that amendment.

The CHAIRMAN ruled that the texts before the Committee should be discussed simultaneously.

Mr. FITZMAURICE (United Kingdom), in introducing the United Kingdom amendment, said that he was not opposed to the principle embodied in article VIII. Under the provisions of the Charter, however, Members were already entitled to appeal to organs of the United Nations in case of need and it was, therefore, unnecessary and undesirable to repeat those provisions in a new convention.

Mr. SPIROPOULOS (Greece) observed that article VIII contained nothing which was not contained in the Charter.

He held the view that the USSR proposal was not entirely in accordance with the Charter. It referred to action under Chapter VI of the Charter, whereas it was doubtful whether action under that Chapter could always be taken in the case of any act of genocide.

Mr. MOROZOV (Union of Soviet Socialist Republics) thought it was incorrect to say that the USSR amendment made article VIII unnecessary. Although the USSR amendment might repeat certain provisions of the Charter, it did not follow that it did so unnecessarily. The convention was in fact a concrete application of the ideas contained in the Charter.

The basic thought underlying the convention was that every violation was of the greatest importance. Any act of genocide was always a threat to international peace and security and as such should be dealt with under Chapters VI and VII of the Charter.

The USSR delegation was not pessimistic in regard to the United Nations' ability to prevent and repress genocide. Chapters VI and VII of the Charter provided means for the prevention and punishment of genocide, means far more concrete and effective than anything possible in the sphere of international jurisdiction. The latter was a mere palliative, which gave the impression that some action was being taken. The obligation to bring a case of genocide to the attention of the Security Council would ensure that States did not evade their obligations.

In conclusion, the representative of the Soviet Union expressed his agreement with the French amendment and suggested that the two amendments should be amalgamated to form a joint USSR and French proposal.

Mr. CHAUMONT (France) agreed with those who felt that article VIII, as it appeared in the *Ad Hoc* Committee draft, was unsatisfactory. The only important point it raised was the identity of the competent organs to which cases of genocide were to be referred. The objections raised by the

une suppression et une substitution de texte. Si, par conséquent, la suppression est décidée à la suite d'un vote, l'on pourra encore proposer un nouveau texte.

M. FITZMAURICE (Royaume-Uni) soutient que, selon la définition donnée par le règlement intérieur, l'amendement de l'Union soviétique est celui qui s'éloigne le plus de l'original. La Commission devrait donc l'examiner en premier lieu.

Le PRÉSIDENT décide que les textes dont la Commission est saisie seront discutés simultanément.

M. FITZMAURICE (Royaume-Uni), présentant l'amendement de sa délégation, déclare qu'il n'est pas opposé au principe contenu dans l'article VIII. Cependant, suivant les dispositions de la Charte, les Membres ont déjà le droit d'en appeler, en cas de besoin, aux organes de l'Organisation des Nations Unies; il est donc inutile et anormal de répéter ces dispositions dans une convention.

M. SPIROPOULOS (Grèce) fait observer que l'article VIII ne contient rien que ne contienne déjà la Charte.

Il estime que la proposition de l'URSS n'est pas entièrement compatible avec la Charte. Elle parle de mesures à prendre conformément au Chapitre VI de la Charte; mais il semble douteux que de telles mesures puissent toujours être prises à l'égard de n'importe quel acte de génocide.

M. MOROZOV (Union des Républiques socialistes soviétiques) estime qu'il n'est pas exact de dire que l'amendement de l'URSS rend inutile l'article VIII. Si l'amendement répète certaines des dispositions de la Charte, ce n'est peut-être pas sans nécessité. La convention constitue, en effet, une application concrète des idées contenues dans la Charte.

La convention est fondée sur le principe que tout cas de violation est de la plus grande importance. Un acte de génocide quel qu'il soit constitue toujours une menace à la paix et à la sécurité internationales, et, comme tel, doit relever des Chapitres VI et VII de la Charte.

La délégation de l'URSS ne craint pas que l'Organisation des Nations Unies manque de moyens pour prévenir et réprimer le génocide. Les dispositions des Chapitres VI et VII de la Charte fournissent, pour prévenir le génocide et le châtier, de moyens infiniment plus concrets et efficaces que tous ceux dont dispose la juridiction internationale. Celle-ci est un simple palliatif qui donne seulement l'impression que certaines mesures sont prises. L'obligation d'attirer l'attention du Conseil de sécurité sur un cas de génocide permettrait de garantir que les Etats ne se soustrairont pas à leurs obligations.

Le représentant de l'Union soviétique déclare qu'il accepte l'amendement de la France, et suggère que les deux amendements soient fondus en une proposition commune de l'URSS et de la France.

M. CHAUMONT (France) est de ceux qui estiment que l'article VIII, tel qu'il a été rédigé par le Comité spécial n'est pas satisfaisant. Cet article ne soulève qu'un point important: la désignation des organes compétents auxquels les cas de génocide devront être déférés. Le Royaume-

United Kingdom and Belgium that such a text was completely redundant were entirely justified.

The USSR amendment seemed to be acceptable because it applied to a specific case and imposed an obligation which was binding on all States which had signed the Charter.

Discussing his delegation's proposal, Mr. Chaumont said that reference to the Security Council did not obviate the necessity for reference to the International Court of Justice. The French delegation thought every possible step should be taken to secure the international punishment of genocide.

Mr. Chaumont went on to read the text of the French amendment [*A/C.6/259*]:

"The High Contracting Parties may call the attention of the Security Council to the cases of genocide and of violations of the present Convention likely to constitute a threat to international peace and security in order that the Security Council may take such measures as it deems necessary to stop the threat."

In his opinion, it was obvious at a first glance that the amendment was in accordance with the Charter. In view of the doubt as to which Articles were applicable to cases of genocide, the French delegation had thought it better not to refer to any specific Chapter of the Charter.

The French amendment was not intended to take the place of international jurisdiction but could fulfil a useful function in the prevention of genocide, since that jurisdiction did not exist.

Mr. KAECKENBEECK (Belgium), in introducing the Belgian amendment, said that article VIII added nothing to the Charter, which enjoyed far greater authority.

He thought that the Soviet Union amendment [*A/C.6/215/Rev.1*] went a little too far in proposing that all cases of genocide and violations of the convention should be referred to the Security Council and in making it obligatory to bring to the attention of the Security Council all violations. It was possible that cases of genocide might occur which did not constitute any threat to peace.

The French amendment was more satisfactory, since it omitted the word "all" and referred only to cases likely to create a threat to peace. The text of the French amendment was therefore permissive since it did not impose a binding obligation to bring all violations of the convention to the attention of the Security Council.

If it were desirable to draw attention to violations of the convention, it was essential that there should be a body to decide whether or not a violation had taken place. On the other hand, a State which would not abide by a ruling of the International Court of Justice would continue to violate the convention.

Mr. MAÚRTUA (Peru) pointed out that to give the Security Council jurisdiction over the prevention and repression of genocide, would, in fact, be to give penal jurisdiction to that body. In his view the measures to be taken against genocide should be juridical and not political.

Mr. RAAFAT (Egypt) noted that the United Kingdom and Belgian representatives had only

Uni et la Belgique ont raison de soutenir que ce texte est tout à fait superflu.

L'amendement de l'URSS est acceptable parce qu'il traite d'un cas précis et comporte un engagement de caractère obligatoire pour tous les Etats signataires de la Charte.

Passant à la proposition soumise par sa délégation, M. Chaumont estime que le recours au Conseil de sécurité ne rend pas inutile le recours à la Cour internationale de Justice. La délégation française estime qu'il faut prendre toutes mesures utiles pour que soit institué, sur le plan international, le châtiment du crime de génocide.

M. Chaumont donne ensuite lecture du texte de l'amendement présenté par la France [*A/C.6/259*]:

"Les Hautes Parties contractantes pourront attirer l'attention du Conseil de sécurité sur les cas de génocide et de violation de la présente Convention susceptibles de constituer une menace contre la paix et la sécurité internationales, afin que le Conseil prenne les mesures qu'il juge nécessaires pour faire cesser cette menace."

Il lui semble évident que cet amendement est conforme à la Charte. Puisqu'on ne sait pas exactement quels sont les articles qui s'appliquent aux cas de génocide, la délégation de la France a préféré ne mentionner expressément aucun Chapitre de la Charte.

L'amendement de la France n'a pas pour but de substituer la solution qu'il préconise au renvoi devant une juridiction internationale, mais, étant donné que cette juridiction n'existe pas encore, il peut s'avérer utile.

M. KAECKENBEECK (Belgique), présentant l'amendement de sa délégation, déclare que l'article VIII n'ajoute rien à la Charte, dont l'autorité est bien plus grande.

Il estime que l'amendement de l'Union soviétique [*A/C.6/215/Rev.1*] va un peu trop loin lorsqu'il propose de saisir le Conseil de sécurité de tous les cas de génocide et de violation de la convention et d'imposer l'obligation de signaler au Conseil toute infraction. Il peut y avoir des cas où le génocide ne constitue pas une menace à la paix.

L'amendement de la France est plus satisfaisant, étant donné qu'il omet le mot "tous" et ne mentionne que les cas susceptibles de menacer la paix. L'amendement de la France n'a donc pas un caractère impératif: il ne comporte pas l'obligation formelle d'informer le Conseil de sécurité de toute infraction à la convention.

Si l'on tient à ce que les cas d'infraction à la convention soient relevés, il faut qu'il existe un organe qui déciderait si une infraction a été commise. D'autre part, un Etat qui ne se conforme pas à une décision de la Cour internationale de Justice enfreindrait par là même la convention.

M. MAÚRTUA (Pérou) déclare que si l'on étendait à la prévention et la répression du génocide la compétence du Conseil de sécurité, on lui donnerait une compétence en matière pénale. M. Maúrtua estime que l'on doit prendre contre le génocide des mesures d'ordre juridique et non d'ordre politique.

M. RAAFAT (Egypte) souligne que les représentants du Royaume-Uni et de la Belgique

the day before (98th meeting) secured the deletion of the last words of article VII and were now attempting to secure the deletion of a whole article dealing with recourse to international organizations. The retention of article VIII was vitally necessary since it was essential to include a reference to international organizations, if the convention were to be taken seriously.

It had been said that article VIII was superfluous in view of the provisions already contained in the Charter. The convention was rather a concrete application of the provisions of the Charter.

His delegation would vote in favour of the joint USSR and French amendment.

Mr. TARAZI (Syria), in announcing that his delegation would vote for the joint USSR and French amendment, pointed out that the French amendment was closely in accordance with the Charter and particularly Article 24.

Mr. MAKTOS (United States of America) outlined the genesis of article VIII, which at a first glance appeared superfluous and in his own opinion was in fact superfluous.

The first task of the *Ad Hoc* Committee had been the discussion of ten abstract principles submitted by the Soviet Union. In his capacity as Chairman of that Committee, he had objected to such a discussion[1] on the ground that it would cause delay and the Committee had in fact sat for six weeks in place of two, as anticipated.

When the Committee came to discuss the question of the submission of cases to the Security Council, members saw a danger in the obligatory submission of cases over which the Security Council might have no jurisdiction.[2] The juridical reasons for the rejection of the proposal had been the impossibility of amending the United Nations Charter or of enlarging the powers of the Security Council by subsequent conventions. By way of compromise the phrase "any competent organ" had been adopted. The USSR proposal [*A/C.6/215/Rev.1*] was open to the same objections because it emphasized one organ only, a reference which was in any event superfluous.

In his view the convention would be a better document if States were left to appeal to the council under already existing provisions of the Charter.

Mr. SUNDARAM (India) asked, with reference to the French amendment, whether the intention was that all acts should be referred to the Security Council or only those "likely to constitute a threat to international peace," that is, whether the latter phrase applied both to cases of genocide and to violations of the convention.

Mr. LACHS (Poland) pointed out that the Committee had considered two possible measures for the punishment of genocide, first, recourse to an international tribunal and secondly, universal repression. Since it had rejected those two possibilities, other means had to be taken to the same

[1] See document E/AC.25/SR.3.
[2] See document E/AC.25/SR.20.

qui ont obtenu, à la 98ème séance, la suppression des derniers mots de l'article VII, s'efforcent maintenant de faire supprimer l'ensemble de l'article qui traite du recours aux organisations internationales. Il est indispensable de maintenir l'article VIII, car il faut mentionner les organisations internationales si l'on veut que la convention soit vraiment appliquée.

On a prétendu que l'article VIII était superflu, étant donné que la Charte contient déjà des dispositions qui tendent au même but. Mais la convention constitue une application concrète de ces dispositions.

La délégation de l'Egypte votera en faveur de l'amendement présenté en commun par l'URSS et la France.

M. TARAZI (Syrie) annonce que sa délégation votera en faveur de l'amendement commun de l'URSS et de la France; il indique que l'amendement soumis par la France suit de très près le texte de la Charte et particulièrement l'Article 24.

M. MAKTOS (Etats-Unis d'Amérique) fait l'historique de l'article VIII. Cet article paraît, dès l'abord, superflu, et M. Maktos estime qu'il l'est en effet.

La première tâche du Comité spécial a été de discuter les dix principes abstraits présentés par l'Union soviétique. En sa qualité de Président de ce Comité, M. Maktos s'est opposé à cette discussion en raison du temps considérable qu'elle nécessitait[1]; en effet, les réunions du Comité ont duré six semaines au lieu des deux semaines qui avaient été prévues.

Lorsque le Comité a abordé la question de savoir si le Conseil de sécurité devait être saisi des cas de génocide, certains membres du Comité ont estimé qu'il serait risqué de faire soumettre obligatoirement au Conseil des cas sur lesquels il n'aurait pas qualité pour statuer[2]. La raison juridique qui a motivé le rejet de cette proposition, c'est l'impossibilité de modifier la Charte des Nations Unies ou d'étendre les pouvoirs du Conseil de sécurité par le moyen de conventions nouvelles. Les mots "les organes compétents" ont été adoptés à titre de compromis. Les mêmes objections s'appliquent à la proposition de l'URSS [*A/C.6/215/Rev.1*], puisqu'on y mentionne expressément un seul organe, ce qui, en tout état de cause, est superflu.

M. Maktos estime qu'il vaudrait mieux que la convention laissât aux Etats le droit de faire appel au Conseil en vertu des dispositions de la Charte.

M. SUNDARAM (Inde) demande, à propos de l'amendement français, si, aux termes de ce dernier, tous les actes doivent être soumis au Conseil de sécurité, ou seulement les actes "susceptibles de constituer une menace contre la paix et la sécurité internationales", c'est-à-dire, si ce dernier membre de phrase s'applique aussi bien au cas de génocide qu'à la violation de la convention.

M. LACHS (Pologne) fait observer que la Commission a examiné deux mesures éventuelles pour réprimer le génocide: d'abord, le recours à un tribunal international et, en second lieu, la répression universelle. Du moment que la Commission a écarté ces deux possibilités, d'autres

[1] Voir le document E/AC.25/SR.3.
[2] Voir le document E/AC.25/SR.20.

end. In such circumstances article VIII should not be deleted but reinforced. In order to punish the crime of genocide, provision had to be made for recourse to the organ of the United Nations best fitted to offer relief and enforce the convention. There would always be one party to the convention who would report cases of genocide and the permissive nature of the French version therefore involved no danger that all cases of genocide would be automatically brought to the attention of the Security Council.

With regard to the problem of determining whether genocide had or had not been committed, he reminded the Committee that there had been many instances in which the Security Council had investigated the facts of cases submitted to it.

The United States and Greek representatives had maintained that the Security Council was not competent to deal with all cases of genocide and that it was impossible to extend the Council's powers. That was not the case. Since the Security Council had been set up, a number of international agreements had added considerably to the powers of the Council. Under the Peace Treaty with Italy, for example, the Security Council had been given extensive powers in the Free Territory of Trieste.

Mr. FITZMAURICE (United Kingdom), referring to the point raised by the representative of India, said that, in his opinion, the phrase "likely to constitute a threat to international peace and security" in the French amendment to the text proposed by the USSR referred both to cases of genocide and to violations of the convention.

With regard to the substance of that amendment, he pointed out that it was already covered by the provisions of Articles 24, 34, 35 (paragraph 1), 36 (paragraph 1) and 37 (paragraph 2) of the Charter and he saw no reason why those provisions should be repeated in the convention.

Mr. ABDOH (Iran) said that, as there was no international criminal tribunal in existence and as the principle of universal repression had been rejected, he was in favour of including the provisions contained in the USSR amendment as amended by the French delegation. In that wording, however, the amendment seemed to lay undue emphasis on the powers of the Security Council to the detriment of those of the General Assembly. According to the Charter, the Security Council and the General Assembly had equal powers to deal with threats to international peace and security. He therefore proposed that the words "or of the General Assembly" should be inserted after the first mention of the Security Council in the joint USSR and French amendment and that the last part of that amendment starting with the words "in order that" should be deleted.

Mr. MAKTOS (United States of America) wished to make his position quite clear in view of the remarks made by the representative of Poland. In his opinion, the convention could not include provisions involving amendments to the Charter. If the joint USSR and French amendment were to have the effect of enlarging the powers of the Security Council, that would involve amending the Charter and if it were not to have such an effect, it was unnecessary to men-

mesures doivent être prévues. C'est pourquoi l'article VIII ne devrait pas être supprimé; il devrait, au contraire, être renforcé. Le soin de punir le crime de génocide doit être confié à l'organe des Nations Unies qui est le plus à même de faire appliquer la convention. Il y aura bien toujours une partie à la convention qui signalera les cas de génocide, et le caractère facultatif du texte français écarte le danger de voir le Conseil de sécurité saisi automatiquement de tous les cas de génocide.

Quant à la question de savoir comment on constatera qu'il y a ou non génocide, M. Lachs rappelle à la Commission qu'à de nombreuses reprises, le Conseil de sécurité a procédé à des enquêtes sur des cas qui lui ont été signalés.

Les représentants des Etats-Unis et de la Grèce ont soutenu que le Conseil de sécurité n'avait pas compétence pour s'occuper de tous les cas de génocide et qu'il est impossible d'étendre les pouvoirs du Conseil. M. Lachs estime que ce n'est pas le cas. Depuis sa création, les pouvoirs du Conseil de sécurité ont été considérablement renforcés par voie d'accords internationaux; par exemple, le Traité de paix avec l'Italie attribue au Conseil de sécurité des droits étendus dans le Territoire libre de Trieste.

M. FITZMAURICE (Royaume-Uni), revenant à la question soulevée par le représentant de l'Inde, déclare qu'à son avis, le membre de phrase: "susceptibles de constituer une menace contre la paix et la sécurité internationales", qui figure dans l'amendement français au texte proposé par l'URSS, se rapporte à la fois aux cas de génocide et aux cas de violation de la convention.

En ce qui concerne le fond de cet amendement, M. Fitzmaurice fait valoir que les dispositions des Articles 24, 34 et 35 (paragraphe 1), 36 (paragraphe 1) et 37 (paragraphe 2) de la Charte en tiennent déjà compte, et il ne voit aucune raison pour répéter ces dispositions dans la convention.

M. ABDOH (Iran) dit qu'en l'absence d'un tribunal pénal international et vu le rejet du principe de la répression universelle, il se prononce en faveur des dispositions contenues dans l'amendement de l'URSS, modifié par la délégation française. Toutefois, le libellé actuel de cet amendement semble trop mettre l'accent sur les pouvoirs du Conseil de sécurité, au détriment de ceux de l'Assemblée générale. Aux termes de la Charte, le Conseil de sécurité et l'Assemblée générale disposent de pouvoirs égaux en ce qui concerne les menaces à la paix et à la sécurité internationales. Par conséquent, il propose que les termes "ou de l'Assemblée générale" soient insérés après la première mention du Conseil de sécurité dans l'amendement commun de l'URSS et de la France, et que la dernière partie de cet amendement commençant par les mots "afin que" soit supprimée.

M. MAKTOS (Etats-Unis d'Amérique) tient à définir nettement sa position, eu égard aux observations faites par le représentant de la Pologne. A son avis, la convention ne peut comprendre des dispositions comportant des amendements à la Charte. Si l'amendement commun de l'URSS et de la France doit entraîner un renforcement des pouvoirs du Conseil de sécurité, cela équivaudra à un amendement à la Charte; s'il ne doit pas avoir cet effet, il est inutile de mentionner

tion the already existing powers of the Security Council.

If cases of genocide were brought before the Security Council, the whole question of the veto would be involved. It would also be contradictory to the provisions of article X of the draft convention which provided that disputes relating to the interpretation or application of the convention should be submitted to the International Court of Justice. If the joint USSR and French amendment were adopted, States might try to avoid submitting their disputes to the International Court of Justice, where they would be settled on purely legal grounds, and might instead submit them to the Security Council, where they would be settled on political grounds with a view to causing embarrassment to other parties.

Prince Wan WAITHAYAKON (Siam) agreed with the representative of the United Kingdom that the provisions of the joint USSR and French amendment were already covered in the Charter and that it was unnecessary to repeat them in the convention. He referred to Article 35, paragraph 1 of the Charter which stated that disputes could be brought to the attention of the Security Council or of the General Assembly. In mentioning the Security Council, alone, the joint USSR and French amendment was misleading if not actually contrary to the provisions of the Charter. He was therefore unable to support that amendment.

Mr. KAECKENBEECK (Belgium) referred to the statement made by the representative of Poland to the effect that article VIII should not only be maintained but also reinforced. In his opinion, the joint USSR and French amendment would not have the effect of reinforcing the original draft of article VIII; on the contrary, it was a limitation of the provisions of that draft. In mentioning only the Security Council instead of all the competent organs of the United Nations, the amendment implied that the Security Council was the only organ that could be consulted in cases of genocide.

Mr. FEDERSPIEL (Denmark) supported the remarks made by the representative of Belgium.

Mr. SPIROPOULOS (Greece) replying to the representative of Poland, explained that he had said that the original Soviet Union amendment [*A/C.6/215/Rev.1*] was not in complete conformity with the provisions of the Charter, because it made it obligatory to report all cases of genocide to the Security Council, while the Charter provided for recourse to both the Security Council and the General Assembly.

The amendment submitted by the French delegation to the original Soviet Union amendment had brought the text into complete conformity with the provisions of the Charter and in that respect it was admissible, although it did not add anything new to the convention. As the new text did not make it obligatory to report all cases of genocide to the Security Council but simply stated that the parties to the convention would have the right to do so, it could no longer be argued that its adoption would prevent States from reporting cases of genocide to other organs of the United Nations.

He admitted that there was some precedent for conferring new powers on the Security Council

des pouvoirs dont le Conseil de sécurité dispose déjà.

En saisissant le Conseil de sécurité des cas de génocide, on soulèverait toute la question du veto. Cette action serait également en contradiction avec les dispositions de l'article X du projet de convention, selon lesquelles les litiges relatifs à l'interprétation ou à l'application de la convention doivent être soumis à la Cour internationale de Justice. Si l'amendement commun de l'URSS et de la France était adopté, il se pourrait que des Etats essaient d'éviter de saisir de leurs différends la Cour internationale de Justice, qui juge en droit, et de les soumettre, en vue d'embarrasser leurs adversaires, au Conseil de sécurité qui leur apporterait une solution d'ordre politique.

Le prince Wan WAITHAYAKON (Siam) convient, avec le représentant du Royaume-Uni, que la Charte tient déjà compte des dispositions de l'amendement commun de l'URSS et de la France et qu'il est superflu de les répéter dans la convention. Il mentionne le paragraphe 1 de l'Article 35 de la Charte, selon lequel les différends peuvent être soumis au Conseil de sécurité ou à l'Assemblée générale. En mentionnant le Conseil de sécurité seul, l'amendement commun de l'URSS et de la France induit en erreur, si même il ne contrevient pas aux dispositions de la Charte. Par conséquent, le représentant du Siam n'appuiera pas cet amendement.

M. KAECKENBEECK (Belgique) se réfère à la déclaration faite par le représentant de la Pologne, selon laquelle l'article VIII devrait non seulement être maintenu, mais encore renforcé. A son avis, l'amendement commun de l'URSS et de la France n'accroît pas la portée du texte primitif de l'article VIII; au contraire, il la restreint. En mentionnant le Conseil de sécurité seul, au lieu de tous les organes compétents de l'Organisation des Nations Unies, l'amendement laisse entendre que le Conseil de sécurité est le seul organe ayant compétence dans les cas de génocide.

M. FEDERSPIEL (Danemark) souscrit aux observations du représentant de la Belgique.

M. SPIROPOULOS (Grèce), répondant au représentant de la Pologne, explique son intervention précédente: il a dit que l'amendement primitif de l'Union soviétique [*A/C.6/215/Rev.1*] n'était pas entièrement conforme aux dispositions de la Charte, car il prescrit d'attirer l'attention du Conseil de sécurité sur tous les cas de génocide, alors que la Charte prévoit le recours aussi bien à l'Assemblée générale qu'au Conseil de sécurité.

L'amendement français à l'amendement primitif de l'Union soviétique a eu pour effet d'en rendre le texte entièrement conforme aux dispositions de la Charte; en ce sens, l'amendement est acceptable, mais il n'introduit rien de neuf dans le projet de convention. Comme le nouveau texte n'oblige pas les Etats à attirer l'attention du Conseil de sécurité sur tous les cas de génocide, mais se borne à dire que tous les signataires de la convention auront le droit de le faire, on ne peut plus objecter que l'adoption de ce texte empêcherait les Etats d'attirer sur les cas de génocide l'attention des autres organes des Nations Unies.

Le représentant de la Grèce convient qu'il y a des précédents en ce qui concerne l'attribution de

through international conventions, but stated that, in such cases, the Security Council would have to be asked whether it wished to accept the new functions.

Mr. MAÛRTUA (Peru) asked whether the adoption of the joint USSR and French amendment would mean that the measures taken by the Security Council would be considered sufficient and if so, whether the Security Council would apply penal as well as political sanctions. He queried further whether the convention would have to be amended if an international criminal tribunal were established in the future.

Mr. ZOUREK (Czechoslovakia) emphasized the importance of including effective provisions for the implementation of the convention. In his opinion, the most effective measures that could be taken would be to entrust the Security Council with the task of considering all cases of genocide. The Security Council was in permanent session and was therefore capable of swift and effective action. It was also the organ entrusted with the primary responsibility for the maintenance of international peace and security, under Article 24 of the Charter, and it was the only organ of the United Nations which had the power to impose effective sanctions. He also reminded the Committee that under Article 25 of the Charter the Members of the United Nations are under the obligation to accept and carry out the decisions of the Security Council.

Some representatives seemed to fear that the joint USSR and French amendment laid undue emphasis on the Security Council, but it would not be of much practical use to have recourse to other organs in cases of genocide, when those other organs would not have the means at their disposal to take effective action.

He supported the joint USSR and French amendment because he thought it would provide a very useful deterrent, but he was not in favour of the subsidiary amendment submitted by the representative of Iran.

Mr. LACHS (Poland) said that the objections raised by the United States representative to reporting all cases of genocide to the Security Council would obtain even if cases of genocide were referred to the International Court of Justice.

In reply to the representative of Greece, he said that it was possible to enlarge the powers of the Security Council through international conventions, without first consulting the Council. He had himself assisted in drafting the Statute of the Free Territory of Trieste, in which the Security Council's powers had been extended without any prior consultation with the Council.

The prevention of genocide was extremely important and if the commission of genocide were linked with threats to international peace and security, it would be a useful deterrent.

Mr. CHAUMONT (France) replied to the various arguments raised in the course of the discussion. The representative of Belgium had stated that the joint USSR and French amendment was unnecessary as it imposed no obligations. It was, however, unnecessary to impose any obligation because the State on whose territory the act of genocide was committed would be unlikely to call

nouveaux pouvoirs au Conseil de sécurité par voie de conventions internationales, mais dans ce cas, il faudrait demander au Conseil s'il accepte ces nouvelles attributions.

M. MAÛRTUA (Pérou) demande si l'adoption de l'amendement commun de l'URSS et de la France signifierait que les mesures prises éventuellement par le Conseil de sécurité seraient considérées comme suffisantes et, dans l'affirmative, si le Conseil exercerait des sanctions tant pénales que politiques. Il demande également s'il faudra modifier la convention, au cas où l'on créerait plus tard une cour pénale internationale.

M. ZOUREK (Tchécoslovaquie) souligne qu'il est important de prévoir des dispositions efficaces pour l'application de la convention. A son avis, la mesure la plus efficace consisterait à confier au Conseil de sécurité l'examen de tous les cas de génocide. Le Conseil est en session d'une façon permanente; c'est ce qui le rend apte à prendre des mesures rapides et efficaces. C'est aussi l'organe auquel est conférée la responsibilité principale du maintien de la paix et de la sécurité internationales en vertu de l'Article 24 de la Charte; c'est le seul organe des Nations Unies qui ait le pouvoir d'exercer des sanctions efficaces. M. Zourek rappelle aussi à la Commission qu'en vertu de l'Article 25 de la Charte, les Membres de l'Organisation des Nations Unies sont obligés d'accepter et d'appliquer les décisions du Conseil de sécurité.

Certains représentants semblent craindre que dans l'amendement commun de l'URSS et de la France, on insiste trop sur le recours au Conseil de sécurité; mais le recours aux autres organes n'aurait pas beaucoup d'effet pratique dans les cas de génocide, car ils ne sont pas en mesure de prendre des mesures efficaces.

Le représentant de la Tchécoslovaquie se prononce pour l'amendement commun de l'URSS et de la France, car il pense que ce texte peut avoir un bon effet préventif; mais n'approuve pas l'amendement supplémentaire soumis par le représentant de l'Iran.

M. LACHS (Pologne) estime que les objections du représentant des Etats-Unis contre le renvoi de tous les cas de génocide devant le Conseil de sécurité seraient également valables s'il s'agissait de les soumettre à la Cour internationale de Justice.

Répondant au représentant de la Grèce, M. Lachs considère qu'il est possible d'élargir, par le moyen de conventions internationales, les pouvoirs du Conseil de sécurité sans consulter d'abord ce dernier. M. Lachs a pris part personnellement à la rédaction du Statut du Territoire libre de Trieste; or, on a étendu les pouvoirs du Conseil de sécurité sans l'avoir consulté au préalable.

Prévenir le génocide est de la plus haute importance et ce serait une bonne mesure préventive que de traiter le génocide comme une menace pour la paix et la sécurité internationales.

M. CHAUMONT (France) répond aux divers arguments avancés au cours des débats. Le représentant de la Belgique a déclaré que l'amendement commun de l'URSS et de la France est inutile, car il n'impose pas d'obligation. Mais il n'est pas nécessaire de prévoir une obligation, car il est peu probable qu'un Etat sur le territoire duquel l'acte de génocide aura été commis attire

the matter to the attention of the Security Council; and whether the obligation were imposed or not, some other Member State would, in all probability, report the matter.

It had also been argued that the joint amendment was unnecessary as it only repeated provisions already set forth in the Charter. The purpose of the amendment was, however, to emphasize the need for international punishment of genocide. The provision that cases of genocide could be reported to the Security Council would not replace the idea of an international criminal tribunal, but the adoption of the amendment would give recognition to the fact that genocide was likely to endanger the maintenance of international peace and security. The fact that the joint amendment repeated the provisions of the Charter was not sufficient reason for rejecting it. The joint United Kingdom and Belgian amendment to article X [*A/C.6/258*] added nothing to Article 36 of the Statute of the International Court of Justice. It was nevertheless a useful amendment and he intended to support it.

The United States representative had said that the joint USSR and French amendment laid undue emphasis on the Security Council. However, it was surely better to mention the most important organ of the United Nations than to delete the article altogether, as proposed by some other delegations. The amendment was not in any way incompatible with article X as the International Court of Justice was to deal with disputes relating to the interpretation or application of the convention while the Security Council was to deal with threats to international peace and security. Moreover, no decision had yet been taken with regard to article X and it would therefore be better to make some provisions for international punishment in article VIII rather than to rely on the provisions of article X, which had not yet been adopted.

With regard to the point raised by the representative of India, he said that the words "likely to constitute a threat to international peace and security" did apply to the cases of genocide as well as to violations of the convention.

He was prepared to accept the insertion of the mention of the General Assembly as suggested by the representative of Iran, but he thought it would be better to insert it each time the Security Council was mentioned, rather than to delete the last part of the amendment.

In reply to the point raised by the representative of Peru, he said that there was nothing in the joint amendment to prevent the establishment of an international criminal tribunal in the future.

Mr. Morozov (Union of Soviet Socialist Republics) endorsed the remarks made by the representative of France. It was not simply a question of repeating the provisions of the Charter. The underlying purpose of the joint amendment was to state in the convention that acts of genocide necessitated the intervention of the most important organ of the United Nations. It was essential to state clearly that acts of genocide

l'attention du Conseil de sécurité sur cet acte; que l'on impose l'obligation ou non, un autre Etat Membre signalera, selon toute probabilité, cet acte de génocide.

On a prétendu également que l'amendement commun est inutile parce qu'il ne fait que répéter les dispositions déjà inscrites dans la Charte. Mais le but de l'amendement est de souligner qu'il est indispensable d'établir une répression internationale du génocide. La disposition en vertu de laquelle l'attention du Conseil de sécurité pourrait être attirée sur les cas de génocide ne remplacerait pas le projet de création d'un tribunal pénal international, mais l'adoption de l'amendement contribuerait à faire reconnaître le fait que le génocide est susceptible de mettre en danger le maintien de la paix et de la sécurité internationales. Pour rejeter l'amendement commun, il ne suffit pas de dire qu'il se borne à reproduire les dispositions de la Charte. L'amendement commun du Royaume-Uni et de la Belgique [*A/C.6/258*], qui modifie l'article X, n'ajoute rien à l'Article 36 du Statut de la Cour internationale de Justice. C'est néanmoins un amendement utile et le représentant de la France a l'intention de se prononcer en sa faveur.

Le représentant des Etats-Unis a déclaré que l'amendement commun de l'URSS et de la France insiste trop sur le rôle du Conseil de sécurité. Cependant, il vaut bien mieux faire mention de l'organe le plus important de l'Organisation des Nations Unies que de supprimer complètement cet article, comme le proposent certaines délégations. L'amendement n'est aucunement incompatible avec l'article X, étant donné que la Cour internationale de Justice doit s'occuper des différends concernant l'interprétation ou l'application de la convention, tandis que le Conseil de sécurité doit s'occuper des menaces contre la paix et la sécurité internationales. En outre, aucune décision n'a encore été prise en ce qui concerne l'article X et, en conséquence, il vaudrait mieux prévoir, dans l'article VIII, des dispositions pénales sur le plan international que de s'appuyer sur les dispositions de l'article X qui n'a pas encore été adopté.

En ce qui concerne la question soulevée par le représentant de l'Inde, M. Chaumont déclare que les mots "susceptibles de constituer une menace contre la paix et la sécurité internationales" s'appliquent aux cas de génocide aussi bien qu'aux violations de la convention.

Il est prêt à accepter qu'il soit fait mention de l'Assemblée générale dans le texte, comme le propose le représentant de l'Iran, mais il estime qu'il vaudrait mieux le faire chaque fois qu'il est fait mention du Conseil de sécurité plutôt que de supprimer la dernière partie de l'amendement.

En réponse à la question soulevée par le représentant du Pérou, il déclare que rien, dans l'amendement commun, n'empêche la création future d'un tribunal pénal international.

M. Morozov (Union des Républiques socialistes soviétiques) s'associe aux remarques faites par le représentant de la France. Il ne s'agit pas simplement de répéter les dispositions de la Charte. Le but fondamental de l'amendement commun est de déclarer, dans la convention, que les actes de génocide rendent nécessaire l'intervention de l'organe le plus important de l'Organisation des Nations Unies. Il est essentiel de

were likely to bring about threats to international peace and security.

He agreed with the representative of France that the General Assembly could be mentioned as well as the Security Council, as suggested by the representative of Iran, but he did not think it would be advisable to delete the last words of the joint amendment.

If the joint amendment were rejected, he would vote in favour of the retention of the *Ad Hoc* Committee's draft, for if no mention were made of the possibility of having recourse to the organs of the United Nations, the whole convention might prove ineffective. He requested that the joint amendment should be put to the vote by roll-call.

Intervening on a point of order, Mr. AGHA SHAHI (Pakistan) observed that in his opinion the USSR-French-Iranian amendment to article VIII should be voted upon first, and not the Belgian and the United Kingdom proposals to delete the article. If the tripartite amendment were carefully studied, it would appear that it sought nothing more than to revise the text of article VIII in certain parts; it fell within the category of an amendment proper as defined in the last sentence of rule 119. The Pakistan delegation was of the view that a motion to delete an article could not be considered an amendment because the last sentence of rule 119 confined the definition of an amendment to such proposal as merely "deletes from" the text. In his view, it appeared that proposals for deletion would more properly fall under rule 120 of the rules of procedure, and hence the United Kingdom and the Belgian proposals to delete article VIII could not be voted upon first as rule 119 did not apply to them. He therefore requested that the USSR-French-Iranian amendment should first be voted upon and then the United Kingdom and the Belgian amendments should be taken up.

Mr. ABDOH (Iran) agreed to withdraw the second part of his amendment if the mention of the General Assembly were included after each mention of the Security Council in the joint USSR and French amendment.

After some discussion as to which amendment should be put to the vote first, the CHAIRMAN ruled that the motion for deletion would be put to the vote first. That vote would determine the fate of the draft of article VIII submitted by the *Ad Hoc* Committee, but would not affect the decision on the joint USSR and French amendment. Whatever the result of the vote on deletion might be, the joint amendment would be put to the vote immediately afterwards.

Mr. GORI (Colombia) challenged the Chairman's ruling. In his opinion the deletion of the whole of the basic text could not be considered as an amendment and should not therefore be put to the vote. The question of deletion would be decided by the final vote on the article as a

déclarer nettement que les actes de génocide sont susceptibles de causer des menaces contre la paix et la sécurité internationales.

Il est d'accord avec le représentant de la France pour qu'il soit fait mention de l'Assemblée générale aussi bien que du Conseil de sécurité, comme le propose le représentant de l'Iran, mais il ne pense pas qu'il serait judicieux de supprimer les derniers mots de l'amendement commun.

Si l'amendement commun est rejeté, M. Morozov votera en faveur du maintien du projet présenté par le Comité spécial, car la convention risque de rester sans effet si on ne mentionne pas la possibilité de recourir aux organes des Nations Unies. Il demande que l'amendement commun soit mis aux voix par appel nominal.

M. AGHA SHAHI (Pakistan) soulève un point d'ordre et observe qu'à son avis l'amendement apporté par l'URSS, la France et l'Iran au texte de l'article VIII devrait être mis aux voix en premier lieu, avant qu'on ne vote sur les propositions de la Belgique et du Royaume-Uni qui tendent à supprimer cet article. Si l'on examine attentivement l'amendement commun soumis par les trois pays, on constate qu'il ne fait que reviser certaines parties de l'article VIII; il constitue donc un amendement au sens propre du mot, conformément à la définition qu'en donne la dernière phrase de l'article 119 du règlement intérieur. La délégation du Pakistan estime, par contre, qu'une motion tendant à supprimer un article ne peut être considérée comme un amendement, puisque la dernière phrase de l'article 119 du règlement intérieur restreint la définition de l'amendement, en spécifiant qu'il ne peut supprimer que "une partie" seulement d'un texte. Il semblerait donc qu'une proposition tendant à supprimer entièrement un texte devrait relever de l'article 120 du règlement intérieur; c'est pourquoi on ne saurait mettre aux voix en premier lieu les propositions du Royaume-Uni et de la Belgique visant à supprimer l'article VIII, car l'article 119 du règlement intérieur ne s'applique pas à ces propositions. Le représentant du Pakistan demande donc que l'on mette aux voix tout d'abord l'amendement présenté par l'URSS, la France et l'Iran, et que l'on passe ensuite aux amendements du Royaume-Uni et de la Belgique.

M. ABDOH (Iran) consent à retirer la deuxième partie de son amendement si mention est faite de l'Assemblée générale après chaque mention du Conseil de sécurité dans l'amendement commun de l'URSS et de la France.

Après discussion pour savoir quel amendement doit être mis aux voix le premier, le PRÉSIDENT décide que la motion de suppression sera mise aux voix la première. Ce vote déterminera le sort du texte de l'article VIII présenté par le Comité spécial, mais n'influera pas sur la décision concernant l'amendement commun de l'URSS et de la France. Quel que soit le résultat du vote sur la suppression, l'amendement commun sera mis aux voix immédiatement après.

M. GORI (Colombie) fait appel de la décision du Président. A son avis, la suppression de tout texte de base ne peut être considérée comme un amendement, et, en conséquence, ne doit pas être mise aux voix. La question de la suppression doit être décidée par le vote final portant sur l'article

whole after all the amendments had been put to the vote.

The CHAIRMAN called for a vote on the appeal of the Colombian representative.

The Chairman's ruling was sustained by 17 votes to 10, with 11 abstentions.

In accordance with the request made by the USSR representative, the CHAIRMAN called for a roll-call vote on the proposal for the deletion of article VIII as set forth in the *Ad Hoc* Committee's draft, submitted by the delegations of Belgium and the United Kingdom.

A vote was taken by roll-call as follows:

The Union of Soviet Socialist Republics, having been drawn by lot by the Chairman voted first:

In favour: United Kingdom, United States of America, Uruguay, Belgium, Brazil, Canada, Cuba, Denmark, Dominican Republic, Ecuador, India, Luxembourg, Netherlands, New Zealand, Norway, Panama, Peru, Siam, Sweden, Turkey, Union of South Africa.

Against: Union of Soviet Socialist Republics, Venezuela, Yugoslavia, Afghanistan, Australia, Bolivia, Byelorussian Soviet Socialist Republic, China, Colombia, Czechoslovakia, France, Greece, Iran, Pakistan, Philippines, Poland, Syria, Ukrainian Soviet Socialist Republic.

Abstaining: Chile.

The proposal was adopted by 21 votes to 18 with 1 abstention.

The meeting rose at 11.45 p.m.

HUNDRED AND SECOND MEETING

Held at the Palais de Chaillot, Paris, on Friday, 12 November 1948, at 10.45 a.m.

Chairman: Mr. R. J. ALFARO (Panama).

51. Continuation of the consideration of the draft convention on genocide [*E/794*]: report of the Economic and Social Council [*A/633*]

ARTICLE VIII (*conclusion*)

The CHAIRMAN stated that the representative of the USSR had asked to be allowed to make some comments before the vote was taken on article VIII of the convention.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that at the 101st meeting, the Committee had not heard all the statements by representatives in explanation of their vote with regard to the deletion of article VIII. Those explanations should be heard before a vote was taken on the second proposal to which the Chairman had referred.

The USSR delegation had voted against the deletion of article VIII because it considered that the convention should contain some reference to the possibility of submitting any acts of genocide or violations of the convention to an authoritative organ of the United Nations.

Mr. Morozov also wished to point out that, since the previous meeting, he had studied the

dans son ensemble, après que tous les amendements auront été mis aux voix.

Le PRÉSIDENT met aux voix l'appel du représentant de la Colombie.

Par 17 voix contre 10, avec 11 abstentions, la décision du Président est maintenue.

Conformément à la demande du représentant de l'URSS, le PRÉSIDENT fait procéder au vote par appel nominal sur la proposition de la Belgique et du Royaume-Uni tendant à supprimer l'article VIII tel qu'il figure dans le projet du Comité spécial.

Il est procédé au vote par appel nominal.

L'appel commence par l'Union des Républiques socialistes soviétiques, dont le nom est tiré au sort par le Président:

Votent pour: Royaume-Uni, Etats-Unis d'Amérique, Uruguay, Belgique, Brésil, Canada, Cuba, Danemark, République Dominicaine, Equateur, Inde, Luxembourg, Pays-Bas, Nouvelle-Zélande, Norvège, Panama, Pérou, Siam, Suède, Turquie, Union Sud-Africaine.

Votent contre: Union des Républiques socialistes soviétiques, Venezuela, Yougoslavie, Afghanistan, Australie, Bolivie, République socialiste soviétique de Biélorussie, Chine, Colombie, Tchécoslovaquie, France, Grèce, Iran, Pakistan, Philippines, Pologne, Syrie, République socialiste soviétique d'Ukraine.

S'abstient: le Chili.

Par 21 voix contre 18, avec une abstention, la proposition est adoptée.

La séance est levée à 23 h. 45.

CENT-DEUXIEME SEANCE

Tenue au Palais de Chaillot, Paris, le vendredi, 12 novembre 1948, à 10 h. 45.

Président: M. R. J. ALFARO (Panama).

51. Suite de l'examen du projet de convention sur le génocide [*E/794*]: rapport du Conseil économique et social [*A/633*]

ARTICLE VIII (*fin*)

Le PRÉSIDENT annonce que le représentant de l'URSS a demandé à faire un exposé avant qu'il ne soit procédé au vote sur l'article VIII de la convention.

M. MOROZOV (Union des Républiques socialistes soviétiques) fait observer qu'à la 101ème séance, la Commission n'a pas entendu tous les représentants expliquer leur vote au sujet de la suppression de l'article VIII. Ces explications doivent être entendues avant que n'intervienne le vote sur la deuxième proposition dont a fait mention le Président.

La délégation de l'URSS a voté contre la suppression de l'article VIII parce qu'elle estime qu'il faut, dans la convention, une disposition qui prévoie de quelque façon la possibilité de soumettre à un organe autorisé de l'Organisation des Nations Unies tous les actes de génocide ou violations de la convention.

M. Morozov indique, en outre, que, depuis la dernière séance, il a examiné, à la lumière de la

Annex 50

UNGA, Sixth Committee, Hundred and Second Meeting, Continuation of the consideration of the draft convention on genocide [E/794] : report to the Economic and Social Council [A/633] (12 November 1948), UN doc. A/C.6/SR.102 [extract]

Available at:

http://undocs.org/A/C.6/SR.102

whole after all the amendments had been put to the vote.

The CHAIRMAN called for a vote on the appeal of the Colombian representative.

The Chairman's ruling was sustained by 17 votes to 10, with 11 abstentions.

In accordance with the request made by the USSR representative, the CHAIRMAN called for a roll-call vote on the proposal for the deletion of article VIII as set forth in the *Ad Hoc* Committee's draft, submitted by the delegations of Belgium and the United Kingdom.

A vote was taken by roll-call as follows:

The Union of Soviet Socialist Republics, having been drawn by lot by the Chairman voted first:

In favour: United Kingdom, United States of America, Uruguay, Belgium, Brazil, Canada, Cuba, Denmark, Dominican Republic, Ecuador, India, Luxembourg, Netherlands, New Zealand, Norway, Panama, Peru, Siam, Sweden, Turkey, Union of South Africa.

Against: Union of Soviet Socialist Republics, Venezuela, Yugoslavia, Afghanistan, Australia, Bolivia, Byelorussian Soviet Socialist Republic, China, Colombia, Czechoslovakia, France, Greece, Iran, Pakistan, Philippines, Poland, Syria, Ukrainian Soviet Socialist Republic.

Abstaining: Chile.

The proposal was adopted by 21 votes to 18 with 1 abstention.

The meeting rose at 11.45 p.m.

HUNDRED AND SECOND MEETING

Held at the Palais de Chaillot, Paris, on Friday, 12 November 1948, at 10.45 a.m.

Chairman: Mr. R. J. ALFARO (Panama).

51. Continuation of the consideration of the draft convention on genocide [*E/794*]: report of the Economic and Social Council [*A/633*]

ARTICLE VIII (*conclusion*)

The CHAIRMAN stated that the representative of the USSR had asked to be allowed to make some comments before the vote was taken on article VIII of the convention.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that at the 101st meeting, the Committee had not heard all the statements by representatives in explanation of their vote with regard to the deletion of article VIII. Those explanations should be heard before a vote was taken on the second proposal to which the Chairman had referred.

The USSR delegation had voted against the deletion of article VIII because it considered that the convention should contain some reference to the possibility of submitting any acts of genocide or violations of the convention to an authoritative organ of the United Nations.

Mr. Morozov also wished to point out that, since the previous meeting, he had studied the

dans son ensemble, après que tous les amendements auront été mis aux voix.

Le PRÉSIDENT met aux voix l'appel du représentant de la Colombie.

Par 17 voix contre 10, avec 11 abstentions, la décision du Président est maintenue.

Conformément à la demande du représentant de l'URSS, le PRÉSIDENT fait procéder au vote par appel nominal sur la proposition de la Belgique et du Royaume-Uni tendant à supprimer l'article VIII tel qu'il figure dans le projet du Comité spécial.

Il est procédé au vote par appel nominal.

L'appel commence par l'Union des Républiques socialistes soviétiques, dont le nom est tiré au sort par le Président:

Votent pour: Royaume-Uni, Etats-Unis d'Amérique, Uruguay, Belgique, Brésil, Canada, Cuba, Danemark, République Dominicaine, Equateur, Inde, Luxembourg, Pays-Bas, Nouvelle-Zélande, Norvège, Panama, Pérou, Siam, Suède, Turquie, Union Sud-Africaine.

Votent contre: Union des Républiques socialistes soviétiques, Venezuela, Yougoslavie, Afghanistan, Australie, Bolivie, République socialiste soviétique de Biélorussie, Chine, Colombie, Tchécoslovaquie, France, Grèce, Iran, Pakistan, Philippines, Pologne, Syrie, République socialiste soviétique d'Ukraine.

S'abstient: le Chili.

Par 21 voix contre 18, avec une abstention, la proposition est adoptée.

La séance est levée à 23 h. 45.

CENT-DEUXIEME SEANCE

Tenue au Palais de Chaillot, Paris, le vendredi, 12 novembre 1948, à 10 h. 45.

Président: M. R. J. ALFARO (Panama).

51. Suite de l'examen du projet de convention sur le génocide [*E/794*]: rapport du Conseil économique et social [*A/633*]

ARTICLE VIII (*fin*)

Le PRÉSIDENT annonce que le représentant de l'URSS a demandé à faire un exposé avant qu'il ne soit procédé au vote sur l'article VIII de la convention.

M. MOROZOV (Union des Républiques socialistes soviétiques) fait observer qu'à la 101ème séance, la Commission n'a pas entendu tous les représentants expliquer leur vote au sujet de la suppression de l'article VIII. Ces explications doivent être entendues avant que n'intervienne le vote sur la deuxième proposition dont a fait mention le Président.

La délégation de l'URSS a voté contre la suppression de l'article VIII parce qu'elle estime qu'il faut, dans la convention, une disposition qui prévoie de quelque façon la possibilité de soumettre à un organe autorisé de l'Organisation des Nations Unies tous les actes de génocide ou violations de la convention.

M. Morozov indique, en outre, que, depuis la dernière séance, il a examiné, à la lumière de la

joint USSR and French text with the Iranian additions (101st meeting), in the light of the terms of the Charter and he had unfortunately reached the conclusion that he was unable to accept the amendments submitted by the representative of Iran. Mr. Morozov therefore withdrew the agreement he had rather hastily made at the 101st meeting as he could not accept the inclusion of the words "or the General Assembly" in the two places where the Iranian representative had inserted them. If the Iranian suggestion were adopted, the text of the joint USSR and French amendment would become ambiguous and would contradict Article 24 of the Charter. That article clearly stated that it was within the competence of the Security Council to take measures for the maintenance of international peace and security. The Iranian amendment suggested that the General Assembly should take measures which were exclusively within the competence of the Security Council. In view of those contradictory terms, which he had not noticed at the 101st meeting, he considered it necessary to request the deletion of the two Iranian additions to the joint USSR and French text. The Soviet Union delegation would not, otherwise, be able to vote for the amendment.

Mr. DIGNAM (Australia) thought the Committee was confused. At the 101st meeting the majority had voted in favour of the deletion of article VIII in the belief that, if that article were deleted, a larger number of delegations would be able to vote for the amendment sponsored by the Soviet Union, France and Iran. The Australian representative no longer had the opportunity of supporting that amendment. The question of deleting article VIII should be reconsidered, particularly as some delegations had not clearly understood the implications of the vote.

Mr. RAAFAT (Egypt) reminded the Committee that at the 101st meeting he had supported the joint USSR and French amendment. However, in the course of the discussion which took place subsequently, that amendment had been somewhat modified with the approval of both the French and the Soviet Union delegations. The Iranian proposal had not been discussed at the 101st meeting and, in his opinion, the insertion of the words "or the General Assembly" after "the Security Council" would not result in any substantial modification of article VIII. The original text of article VIII, as drawn up by the *Ad Hoc* Committee, was preferable to the joint USSR and French proposal as amended by Iran. If the Security Council were mentioned, he saw no reason why the Trusteeship Council and the Economic and Social Council should not also be included. Nevertheless, the Egyptian delegation would vote for the original text of the *Ad Hoc* Committee or the joint USSR and French text without the Iranian amendment.

Mr. CHAUMONT (France) wished first of all to make an observation on procedure in reply to a point raised by the Australian representative. In Mr. Chaumont's opinion it was not possible to reopen a discussion on a question which had already been voted upon. According to rule 112 of the rules of procedure, such a decision could

Charte, le texte commun de l'URSS et de la France, ainsi que les additions proposées par l'Iran (101ème séance), et la conclusion à laquelle il a abouti malheureusement, c'est qu'il lui est impossible d'accepter ces additions. Aussi M. Morozov doit-il retirer l'acceptation qu'il avait donnée un peu hâtivement au cours de la 101ème séance, attendu qu'il ne peut accepter l'insertion des termes: "ou l'Assemblée générale", aux deux endroits où le représentant de l'Iran les a placés. Si la suggestion de l'Iran était adoptée, le texte de l'amendement commun de l'URSS et de la France deviendrait ambigu et se mettrait en contradiction avec l'Article 24 de la Charte. Cet Article énonce clairement que le Conseil de sécurité est compétent pour prendre des mesures en vue du maintien de la paix et de la sécurité internationales. L'amendement de l'Iran propose que l'Assemblée générale prenne des mesures qui sont uniquement du ressort du Conseil de sécurité. Etant donné cette contradiction dans les termes, qu'il n'avait pas remarquée au cours de la 101ème séance, M. Morozov estime devoir demander la suppression des deux additions au texte commun de l'URSS et de la France, proposées par l'Iran. Si elles étaient maintenues, la délégation de l'Union soviétique ne serait pas en mesure de voter pour l'amendement.

M. DIGNAM (Australie) estime que dans cette discussion, on est en pleine confusion. A la 101ème séance, la majorité a voté en faveur de la suppression de l'article VIII, dans la pensée que cette suppression permettrait à un plus grand nombre de délégations de voter en faveur de l'amendement présenté par l'Union soviétique, la France et l'Iran. Maintenant, le représentant de l'Australie n'a plus la possibilité de soutenir cet amendement. La question de la suppression de l'article VIII est à examiner de nouveau, surtout parce que certaines délégations n'ont pas bien compris ce que signifiait le vote.

M. RAAFAT (Egypte) rappelle à la Commission qu'à la séance précédente, il avait appuyé l'amendement commun de l'URSS et de la France. Mais, au cours de la discussion qui a suivi, l'amendement a été quelque peu modifié, avec l'approbation de la délégation française et de celle de l'Union soviétique. La proposition iranienne n'a pas été discutée à la 101ème séance et, de l'avis de M. Raafat, l'insertion des mots "ou l'Assemblée générale" après "le Conseil de sécurité", n'apporterait pas une modification substantielle à l'article VIII. Le texte original de l'article VIII, tel que l'a élaboré le Comité spécial, est préférable au texte commun de l'URSS et de la France amendé par l'Iran. Si l'on mentionne le Conseil de sécurité, M. Raafat ne voit aucune raison de ne pas mentionner également le Conseil de tutelle et le Conseil économique et social. La délégation égyptienne votera en faveur du texte original du Comité spécial ou en faveur du texte commun de l'URSS et de la France moins l'amendement iranien.

M. CHAUMONT (France) tient tout d'abord à s'exprimer sur un point de procédure, en réponse à la question qu'a soulevée le représentant de l'Australie. De l'avis de M. Chaumont, il n'est pas possible de rouvrir la discussion sur une question qui a déjà été tranchée par un vote. Conformément à l'article 112 du règlement inté-

be taken only by the vote of a two-thirds majority of the Committee.

With regard to the question of substance, the representative of France said that at the 101st meeting he had accepted the Iranian amendment in a spirit of conciliation because he hoped that the inclusion of that amendment might allow the Committee to adopt the joint USSR and French text by a large majority. He wished, however, to draw the attention of the Committee to the fact that the joint USSR and French text mentioned only the Security Council. If, however, the Soviet Union representative considered that the amended text of article VIII was contrary to the terms of the Charter, Mr. Chaumont was prepared to ask the Committee to vote on the joint USSR and French amendment as originally submitted, which mentioned the Security Council but not the General Assembly.

Mr. TARAZI (Syria) pointed out that if the joint French and USSR amendment were rejected, the Committee would not be able to vote on article VIII in its original form, because at the 101st meeting the Sixth Committee had voted to suppress the original text of article VIII as drafted by the *Ad Hoc* Committee. Therefore the only question before the Committee was the consideration of the joint French and USSR amendment.

Mr. ABDOH (Iran) regretted that he had heard only the end of the statement by the representative of the Soviet Union, but he concluded that the latter had withdrawn the agreement he had previously given to the amendment submitted by the Iranian delegation. After a recapitulation of what had taken place at the 101st meeting, Mr. Abdoh stated that he considered the discussion on the joint USSR and French proposal as modified by the Iranian amendment as having been closed. He would raise that question as a point of order and wished to hear the Chairman's ruling on the matter.

Mr. IKSEL (Turkey) said that the joint USSR and French text, as amended by the Iranian delegation, had been submitted to the Committee at the 101st meeting as one amendment, the text of which had been agreed upon by the three delegations concerned. At the current meeting, however, that amendment had been submitted as two different amendments. Mr. Iksel suggested that a vote should first be taken on the Iranian amendment. It was incorrect to believe that a vote could be taken on the deletion of article VIII and that in the event of its selection a vote could not again be taken on the *Ad Hoc* Committee text. If that assumption were correct, then the Committee would not be able to vote on any amendment to article VIII.

Mr. GORI (Colombia) shared the views of the Turkish representative. In the state of confusion in which it found itself, the Committee did not know whether it had deleted article VIII or whether it would vote on it again. He had understood at the previous meeting that the procedure was to vote, first of all, on a joint United Kingdom and Belgian amendment for deletion of article VIII, followed by a vote on the joint USSR and French amendment, and then a vote on the text

rieur, une décision ne peut intervenir, dans un tel cas, qu'à la majorité des deux tiers de la Commission.

En ce qui concerne la question de fond, M. Chaumont déclare que c'est dans un esprit de conciliation qu'à la 101ème séance il a accepté l'amendement iranien, parce qu'il espérait que l'insertion de cet amendement permettrait à la grande majorité de la Commission de voter en faveur du texte commun de l'URSS et de la France. Il tient cependant à attirer l'attention de la Commission sur le fait que ce texte commun fait seulement mention du Conseil de sécurité. Mais, si le représentant de l'Union soviétique estime que le texte amendé de l'article VIII est contraire aux termes de la Charte, M. Chaumont est prêt à inviter la Commission à voter l'amendement commun de l'URSS et de la France dans son texte primitif, où il était fait mention du Conseil de sécurité, mais non de l'Assemblée générale.

M. TARAZI (Syrie) fait remarquer que si l'amendement commun de l'URSS et de la France est rejeté, la Commission n'aura pas à voter sur l'article VIII dans sa forme originale car, à la 101ème séance, elle a voté la suppression du texte original de l'article VIII. Le seul point dont la Commission a donc à s'occuper actuellement est l'examen de l'amendement commun de l'URSS et de la France.

M. ABDOH (Iran) regrette de n'avoir entendu que la fin de la déclaration du représentant de l'Union soviétique. Il en a cependant conclu que ce dernier retirait l'accord qu'il avait donné précédemment à l'amendement présenté par la délégation de l'Iran. Après avoir rappelé ce qui s'était passé à la 101ème séance, M. Abdoh déclare qu'il considère comme close la discussion de la proposition commune de l'URSS et de la France, amendée par l'Iran. Il présentera une motion d'ordre à cet égard et attend avec intérêt de savoir quelle décision prendra le Président.

M. IKSEL (Turquie) rappelle que le texte commun de l'URSS et de la France amendé par la délégation de l'Iran, a, au cours de la 101ème séance, été présenté à la Commission sous la forme d'un amendement unique sur le texte duquel les trois délégations intéressées s'étaient mises d'accord. Cependant, à la présente séance, cet amendement a été présenté sous la forme de deux amendements distincts. M. Iksel propose que la Commission vote en premier lieu sur l'amendement de l'Iran. C'est une erreur de croire qu'on peut voter sur la suppression de l'article VIII et qu'un vote ne pourrait plus intervenir sur le texte du Comité spécial si cette suppression était décidée. Car si c'était vrai la Commission ne pourrait plus voter sur aucun amendement à l'article VIII.

M. GORI (Colombie) partage l'opinion du représentant de la Turquie. Il y a tant de confusion dans la discussion que la Commission en arrive à ne pas savoir si elle a supprimé l'article VIII ou si elle doit voter de nouveau à son sujet. Le représentant de la Colombie avait compris, à la précédente séance, que la procédure à suivre consistait à voter en premier lieu sur un amendement commun de la Belgique et du Royaume-Uni visant à supprimer l'article VIII, puis

of the article itself. If the Committee decided that a vote could not be taken on the original text of the *Ad Hoc* Committee, such a decision would be against the rules of procedure, which laid down that amendments had to be voted upon before a vote was taken on the basic text.

The Colombian representative drew the Committee's attention to an error in the procedure which was being followed: a proposal for deletion was being considered an amendment. A proposal for the deletion of an article was not an amendment but a refusal to accept it. A motion could be considered as an amendment to a proposal only if it merely added to, deleted or revised part of that proposal.

Mr. Gori concluded by proposing that the Committee should vote on the text of article VIII, which might prevent further confusion with regard to procedure.

Mr. SPIROPOULOS (Greece), Rapporteur, said that the rules of procedure and the use of logic and common sense should help the Committee to come to a decision. A vote had been taken at the 101st meeting on the text drafted by the *Ad Hoc* Committee; that text was rejected. The Committee then agreed that it would vote on the joint USSR and French amendment as amended by the Iranian delegation. Both the French and the Soviet Union representatives had stated at the current meeting that they no longer agreed with the Iranian amendment. The Committee had therefore before it two amendments, the Iranian amendment which was to be voted on first, and then the joint USSR and French amendment. No useful purpose would be served by a general discussion as to whether or not the vote taken at the previous meeting was correct.

Mr. DEMESMIN (Haiti) pointed out that his delegation had also submitted an amendment to article VIII which had not yet been discussed. He would therefore appreciate it if the Chairman would open the discussion on his amendment.

The CHAIRMAN stated that, at the 101st meeting he had put to discussion three amendments to article VIII, namely, the joint USSR and French amendment, the Iranian amendment and the Haitian amendment. The latter had not been discussed, possibly because the representative of Haiti was not present, but it had been placed before the Committee for discussion. After taking a vote on the procedure to be followed, the Committee had voted first on the question of the deletion of article VIII, which was approved by a majority vote. Some delegations, however, had voted for the deletion of the article in the belief that an agreement had been reached between the Soviet Union, France and Iran on a joint text. The vote on the amendment was not taken, however, because the representative of the Soviet Union had moved for an adjournment. At the current meeting the USSR representative had withdrawn his approval, and while it was true that the withdrawal might be considered out of order, the Chair would not wish to insist on maintaining an accord which apparently did not exist. In his opinion, the Committee should revert to the situation prior to the agreement reached between the representatives of the Soviet Union, France and

à voter sur l'amendement commun de l'URSS et de la France et, enfin, à voter sur le texte de l'article lui-même. Si la Commission décidait qu'un vote ne peut pas intervenir sur le texte original du Comité spécial, ce serait là une décision contraire au règlement intérieur qui prévoit le vote sur les amendements préalablement au vote sur le texte initial.

Le représentant de la Colombie attire l'attention de la Commission sur l'irrégularité de la procédure qu'elle suit: elle considère comme un amendement une proposition de suppression de l'article. Pareille proposition ne constitue pas un amendement mais le rejet de l'article lui-même. On ne peut considérer comme un amendement à une proposition qu'une simple addition, ou bien la suppression ou la revision d'une partie de son texte.

M. Gori conclut en proposant que la Commission vote sur le texte de l'article VIII, ce qui évitera une nouvelle confusion quant à la procédure à suivre.

M. SPIROPOULOS (Grèce), Rapporteur, déclare que la Commission, dans sa décision, doit suivre le règlement intérieur ainsi que les règles de la simple logique et du bon sens. A la 101ème séance, on a voté sur le texte du Comité spécial qui a été rejeté, puis la Commission a décidé de procéder à un vote sur l'amendement présenté conjointement par l'URSS et la France et amendé par l'Iran. Les représentants de la France et de l'Union soviétique ont tous deux déclaré à la présente séance qu'ils n'approuvaient plus l'amendement iranien. La Commission se trouve donc devant deux amendements: l'amendement iranien sur lequel elle a à voter en premier lieu, et l'amendement commun de l'URSS et de la France. Il ne servirait à rien d'entamer une discussion générale sur la question de savoir si le vote intervenu à la précédente séance était ou non correct.

M. DEMESMIN (Haïti) fait observer que sa délégation a, elle aussi, présenté un amendement à l'article VIII qui n'a pas encore été discuté. Il serait donc heureux que le Président voulût bien mettre en discussion son amendement.

Le PRÉSIDENT précise qu'à la 101ème séance, il avait mis en discussion trois amendements à l'article VIII: l'amendement commun de l'URSS et de la France, l'amendement iranian et l'amendement d'Haïti. Si ce dernier n'a pas été discuté, c'est peut-être en raison de l'absence du représentant du Haïti; mais il était néanmoins soumis à la Commission pour qu'elle en discutât. Après avoir voté sur la procédure à suivre, la Commission a voté d'abord sur la suppression de l'article VIII, qui a été décidée à la majorité. Cependant, certaines délégations, en votant pour la suppression de l'article, pensaient que l'Union soviétique, la France et l'Iran s'étaient mis d'accord sur un texte commun. Mais il n'a pas été procédé au vote sur l'amendement parce que le représentant de l'Union soviétique a demandé le renvoi. A la présente séance, le représentant de l'URSS a retiré son approbation et, bien qu'on puisse, en fait, considérer ce retrait comme contraire à la règle normale, le Président n'insistera pas pour qu'on maintienne un accord qui semble bien ne pas exister. Selon lui, la Commission devrait reprendre la question telle qu'elle se présentait avant que ne fût conclu l'accord entre les représentants de l'Union soviétique, de la

Iran. In such an event, not only the representatives of the Soviet Union and France should be allowed to withdraw their amendment but also the representative of Iran.

While the Chairman considered the Colombian representative's observations pertinent, he was afraid that they could have been taken into consideration only when the rules of procedure were being drawn up. However illogical it might seem to certain delegations, a motion for deletion constituted an amendment according to the rules of procedure. For that reason a vote on deletion would have to be taken first, being the proposal furthest removed from the original proposal.

The Chairman ruled that the Committee should vote first on the Iranian amendment, then on the joint USSR and French amendment, and then on the Haitian amendment. Any member of the Committee could appeal against that ruling.

With regard to a reconsideration of the vote taken on the deletion of article VIII, that question could, in accordance with rule 112, be decided only by the vote of a two-thirds majority of the Committee.

Mr. ABDOH (Iran) asked whether the Soviet Union representative would be willing to accept the addition of the words "or the General Assembly" in both places where it had been inserted, or only in the second place. He had discussed the matter with the representatives of France and the USSR and both had agreed to the first amendment but not to the second.

Mr. MOROZOV (Union of Soviet Socialist Republics) requested the Chairman to grant the Committee a recess of ten minutes in order to enable the representatives of France, Iran and the Soviet Union to come to a quick decision on the matter.

Mr. CORREA (Ecuador) appealed against the ruling of the Chair.

The CHAIRMAN decided that before an appeal could be made against the ruling, the Committee should take the brief recess requested by the representative of the USSR.

The Committee was adjourned for ten minutes.

Mr. CHAUMONT (France) informed the Committee that the Soviet Union, Iranian and French delegations had come to an agreement on a joint text which read as follows:

"The High Contracting Parties may call the attention of the Security Council or, if necessary, of the General Assembly to the cases of genocide and of violations of the present Convention likely to constitute a threat to international peace and security, in order that the Security Council may take such measures as it may deem necessary to stop that threat."

Mr. Chaumont explained the main feature of the new text was the addition of the words "or if necessary" which were inserted in order to meet the USSR representative's objections that the responsibility for maintaining international peace and security should be entrusted to the Security Council alone.

France et de l'Iran. En ce cas, non seulement les représentants de l'Union soviétique et de la France, mais aussi le représentant de l'Iran devraient avoir la faculté de retirer leur amendement.

Le Président considère comme pertinentes les observations formulées par le représentant de la Colombie, mais croit qu'elles n'auraient pu être prises en considération que lorsque le règlement intérieur a été élaboré. Si illogique que cela puisse paraître à certaines délégations, une demande de suppression d'un article constitue bien un amendement, d'après le règlement intérieur. C'est pourquoi il convenait de voter en premier lieu sur cette suppression, car il s'agissait là de la proposition qui s'éloignait le plus du texte original.

Le Président décide que la Commission votera en premier lieu sur l'amendement iranien, puis sur l'amendement commun de l'URSS et de la France et, enfin, sur l'amendement d'Haïti. Tout membre de la Commission peut faire appel de cette décision.

Pour ce qui est d'un retour sur le vote intervenu, portant suppression de l'article VIII, la Commission ne peut en décider, d'après l'article 112 du règlement intérieur, que par un vote à la majorité des deux tiers.

M. ABDOH (Iran) demande si le représentant de l'Union soviétique serait disposé à accepter l'addition de la formule "ou de l'Assemblée générale" aux deux endroits où elle a été insérée, ou seulement au second. Il en a discuté tant avec le représentant de la France qu'avec celui de l'URSS et tous deux se sont déclarés d'accord sur le premier amendement, mais non sur le second.

M. MOROZOV (Union des Républiques socialistes soviétiques) prie le Président de vouloir bien accorder à la Commission une suspension de séance de dix minutes, pour permettre aux représentants de la France, de l'Iran et de l'Union soviétique de prendre rapidement une décision à ce sujet.

M. CORREA (Equateur) fait appel de la décision du Président.

Le PRÉSIDENT décide qu'avant qu'il puisse être fait appel de cette décision, la brève suspension de séance qu'a sollicitée le représentant de l'URSS devra avoir lieu.

La séance est suspendue pendant dix minutes.

A la reprise de la séance, M. CHAUMONT (France) fait connaître à la Commission que les délégations de l'Union soviétique, de l'Iran et de la France se sont mises d'accord sur le texte commun que voici:

"Les Hautes Parties contractantes pourront attirer l'attention du Conseil de sécurité ou, en cas de besoin, de l'Assemblée générale, sur les cas de génocide et de violation de la présente Convention susceptibles de constituer une menace contre la paix et la sécurité internationales, afin que le Conseil de sécurité prenne les mesures qu'il juge nécessaires pour faire cesser cette menace."

M. Chaumont explique que ce qui caractérise principalement le nouveau texte, c'est l'addition des mots "ou, en cas de besoin"; si on les y a insérés, c'est pour parer aux objections du représentant de l'URSS qui soutient que c'est au Con-

tional peace and security rested with the Security Council. At the same time reference had been made to the General Assembly to meet the desires of those who wished to have mention of the Assembly made in article VIII, in accordance with Article 11 and 12 of the Charter. Mr. Chaumont felt certain that the new text could be adopted unanimously by the Committee.

The CHAIRMAN stated that the new text superseded two amendments to article VIII which were before the Committee, namely, the joint USSR and French amendment and the Iranian amendment. It was understood that no discussion would take place on the amendments as they had already been fully considered.

Mr. DEMESMIN (Haiti) expressed the opinion that a vote could not be taken on an amendment which had not been discussed.

The CHAIRMAN pointed out that the Haitian amendment had been placed before the Committee for discussion and had even been read at the 101st meeting, although unfortunately the Haitian representative was not present. As no representative had spoken in favour or against the Haitian amendment, he presumed that their minds had been made up on the subject and that they were ready to proceed to the vote.

Mr. MAKTOS (United States of America) did not agree with the Chairman's ruling. The new text submitted was entirely different from the original *Ad Hoc* Committee draft and the Committee could not vote on a different text before it had been discussed. In the first place, the problem would be sent to the Security Council for decision, and in view of the veto power which could be exercised there, Mr. Maktos did not think that the Committee could adopt the text. The Iranian amendment would at least place the General Assembly on an equal footing with the Security Council. In his opinion, the addition of the words "if necessary" was inconsistent with the terms of the Charter.

According to Article 11 of the Charter, the General Assembly was not under an obligation to call the attention of the Security Council to all situations which were likely to endanger international peace and security, since it was also permitted to make recommendations with regard to any such questions to the States concerned.

Mr. DIGNAM (Australia) shared the views of the representative of the United States that a vote could not be taken on a resolution which had not been circulated and the text of which was entirely different from the one which had been previously discussed by the Committee. There was considerable lip service given in the Sixth Committee to the General Assembly and to the principles laid down in the Charter, but the Committee was being asked, by implication, to undermine the authority of the General Assembly and his delegation was therefore not willing to support such a proposal. At the 101st meeting the amendment had been on the point of being almost unanimously adopted by the Committee. He could find no satisfactory explanation for the change of attitude which had taken place in certain delegations overnight.

seil de sécurité qu'incombe la responsabilité du maintien de la paix et de la sécurité internationales. Si, en même temps, mention est faite de l'Assemblée générale, c'est pour répondre au désir de ceux qui voudraient qu'une telle mention de l'Assemblée apparût dans l'article VIII, conformément aux Articles 11 et 12 de la Charte. Pour M. Chaumont, il ne fait pas de doute que le nouveau texte peut être adopté à l'unanimité par la Commission.

Le PRÉSIDENT expose que le nouveau texte vient de se substituer aux deux amendements à l'article VIII dont la Commission est saisie, à savoir l'amendement commun de l'URSS et de la France et l'amendement de l'Iran. Il est bien entendu qu'il ne sera pas discuté de ces amendements, car ils ont déjà été étudiés en détail.

M. DEMESMIN (Haïti) est d'avis qu'on ne peut pas procéder à un vote sur un amendement dont on n'a pas discuté.

Le PRÉSIDENT fait remarquer que l'amendement d'Haïti a bien été soumis à la Commission pour discussion et qu'il en a même été donné lecture à la 101ème séance; il est regrettable que le représentant d'Haïti ait été absent. De l'avis du Président, le fait qu'aucun représentant n'a ni défendu, ni combattu l'amendement d'Haïti permet de penser que la décision de tous les représentants à ce sujet est arrêtée et qu'ils sont disposés à passer au vote.

M. MAKTOS (Etats-Unis d'Amérique) n'accepte pas la décision du Président. Le nouveau texte proposé diffère entièrement du projet primitif et la Commission ne peut voter sur un texte différent sans qu'il ait été mis en discussion. La question serait renvoyée pour décision au Conseil de sécurité et, en raison du droit de veto qui s'y exerce, M. Maktos ne pense pas que la Commission puisse adopter ce texte. L'amendement de l'Iran aurait à tout le moins le résultat de placer l'Assemblée générale sur le même pied que le Conseil de sécurité. De l'avis de M. Maktos, l'addition de la formule "ou, en cas de besoin" est incompatible avec les dispositions de la Charte.

Aux termes de l'Article 11 de la Charte, l'Assemblée générale n'est pas tenue d'attirer l'attention du Conseil de sécurité sur toutes les situations qui semblent devoir mettre en danger la paix et la sécurité internationales, puisqu'elle peut aussi, sur tous cas de ce genre, faire des recommandations aux Etats intéressés.

M. DIGNAM (Australie) pense, comme le représentant des Etats-Unis, qu'on ne peut mettre aux voix une résolution qui n'a pas été distribuée et dont le texte diffère entièrement de celui qui a déjà été discuté par la Commission. On a eu souvent, à la Sixième Commission de bonnes paroles plus ou moins sincères pour l'Assemblée générale et les principes de la Charte mais ce qu'on lui demande maintenant, tacitement, c'est de saper l'autorité de cette même Assemblée générale. La délégation australienne ne consent donc pas à appuyer une telle proposition. A la 101ème séance, la Commission a failli adopter l'amendement à la quasi-unanimité de ses membres. M. Dignam ne peut trouver d'explication satisfaisante au changement d'attitude qui s'est produit du jour au lendemain chez certaines délégations.

The Australian representative concluded by stating that he was in favour of the retention of article VIII in its original form.

Mr. ABDOH (Iran) stated that he supported the triple amendment and had nothing more to add on the point.

Mr. DEMESMIN (Haiti) pointed out that the debate had been closed on the Haitian amendment during the preceding meeting when an agreement had been reached on the joint USSR and French proposal as amended by the Iranian delegation. In view of the fact that the Soviet Union withdrew its agreement to the Iranian amendment, the debate was not closed, and he considered that in those circumstances he might be allowed to speak on his amendment.

The CHAIRMAN agreed that if the Committee decided to reopen the debate on the joint USSR and French proposal as amended by the Iranian delegation, debate would also have to be permitted on the Haitian amendment.

He ruled that the debate could not be reopened.

Mr. CHAUMONT (France) suggested that the Haitian amendment should not be ruled upon in connexion with the joint USSR and French proposal as amended by the Iranian delegation. The debate on the triple amendment could be considered closed, but the representative of Haiti should be allowed to speak in favour of his amendment.

Mr. DEMESMIN (Haiti) appealed against the Chairman's ruling.

The CHAIRMAN put to the vote the proposal to reopen the debate on the Haitian amendment.

The proposal was adopted by 19 votes to 11, with 10 abstentions.

The CHAIRMAN then put to the vote the triple amendment of France, the USSR and Iran, as amended.

Mr. MOROZOV (Union of Soviet Socialist Republics) requested that the vote be taken by roll-call.

The vote was taken by roll-call.

Peru, having been drawn by lot by the Chairman, voted first:

In favour: Poland, Saudi Arabia, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia, Byelorussian Soviet Socialist Republic, Czechoslovakia, Egypt, France, Haiti, Iran, Pakistan.

Against: Peru, Philippines, Siam, Sweden, Turkey, Union of South Africa, United Kingdom, United States of America, Uruguay, Venezuela, Australia, Brazil, Canada, Chile, China, Cuba, Denmark, Dominican Republic, Ecuador, India, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Panama.

Abstaining: Afghanistan, Argentina, Bolivia, El Salvador, Greece.

The amendment was rejected by 27 votes to 13, with 5 abstentions.

The CHAIRMAN pointed out that since the amendment had been rejected, there was no need to vote on the proposed Haitian amendment.

Le représentant de l'Australie conclut en déclarant qu'il votera en faveur du maintien de l'article VIII dans sa forme primitive.

M. ABDOH (Iran) appuie l'amendement commun des trois délégations. Il n'a rien à ajouter sur la question.

M. DEMESMIN (Haïti) fait remarquer que la discussion s'est terminée sur l'amendement haïtien au cours de la séance précédente, lorsque l'accord s'est fait sur l'amendement commun de l'URSS et de la France, amendé par l'Iran. Etant donné que l'Union soviétique a retiré son accord sur l'amendement de l'Iran, la discussion n'est pas close et le représentant d'Haïti estime que, dans ces conditions, il doit être autorisé à parler en faveur de son amendement.

Le PRÉSIDENT déclare que, en effet, si la Commission décidait de rouvrir la discussion sur l'amendement commun de l'URSS et de la France amendé par l'Iran, le débat devrait porter également sur l'amendement d'Haïti.

Il décide de ne pas rouvrir le débat.

M. CHAUMONT (France) propose que l'amendement d'Haïti ne soit pas traité en liaison avec l'amendement commun de l'URSS et de la France amendé par l'Iran. On peut considérer la discussion sur cet amendement commun comme close, mais le représentant d'Haïti doit être autorisé à parler en faveur de son amendement.

M. DEMESMIN (Haïti) fait appel de la décision du Président.

Le PRÉSIDENT met aux voix la proposition tendant à rouvrir la discussion sur l'amendement d'Haïti.

Par 19 voix contre 11, avec 10 abstentions, la proposition est adoptée.

Le PRÉSIDENT met alors aux voix l'amendement commun de la France, de l'URSS et de l'Iran sous sa nouvelle forme.

M. MOROZOV (Union des Républiques socialistes soviétiques) demande l'appel nominal.

Il est procédé au vote par appel nominal.

L'appel commence par le Pérou dont le nom est tiré au sort par le Président.

Votent pour: Pologne, Arabie saoudite, Syrie, République socialiste soviétique d'Ukraine, Union des Républiques socialistes soviétiques, Yougoslavie, République socialiste soviétique de Biélorussie, Tchécoslovaquie, Egypte, France, Haïti, Iran, Pakistan.

Votent contre: Pérou, Philippines, Siam, Suède, Turquie, Union Sud-Africaine, Royaume-Uni, Etats-Unis d'Amérique, Uruguay, Venezuela, Australie, Brésil, Canada, Chili, Chine, Cuba, Danemark, République Dominicaine, Equateur, Inde, Luxembourg, Mexique, Pays-Bas, Nouvelle-Zélande, Nicaragua, Norvège, Panama.

S'abstiennent: Afghanistan, Argentine, Bolivie, Salvador, Grèce.

Par 27 voix contre 13, avec 5 abstentions, l'amendement est rejeté.

Le PRÉSIDENT fait remarquer que l'amendement commun ayant été repoussé, il n'y a pas lieu de procéder au vote sur l'amendement d'Haïti.

Mr. CORREA (Ecuador) had voted for the deletion of article VIII of the draft convention and against the triple amendment because the Charter was quite clear as to the right on the part of Member States to appeal to organs of the United Nations, and it was unnecessary to restate those rights in another document.

He had requested the right to explain his appeal from a ruling, and had pointed out that that procedure had been followed in the past, during the 93rd and 101st meetings of the Sixth Committee, for example.

The CHAIRMAN stated that in the instances mentioned by the representative of Ecuador, the explanation by the representative submitting an appeal had been given before the appeal had been formally made, and the Chair had not been able to anticipate the intentions of the speaker.

Mr. CHAUMONT (France) considered that by deleting the last phrase of article VII of the draft convention (98th meeting) and by rejecting the triple amendment, the Committee had not only refused to seize United Nations organs of the crime of genocide, but had also removed the question from the jurisdiction of an international tribunal. Consequently, there was no body competent to deal with crimes of genocide.

Mr. DIHIGO (Cuba) had voted against the triple amendment because the provisions contained therein were already included in Articles 34, 35 and 37 of the Charter. Article X of the draft convention would give the International Court of Justice jurisdiction. If the Committee had adopted article VIII of the *Ad Hoc* Committee draft, competence in the question would have been given to two different organs. The delegation of Cuba favoured granting jurisdiction to the International Court of Justice in view of the fact that application of the veto in the Security Council often prevented that body from acting.

Mr. RAAFAT (Egypt) considered that since the last part of article VII had been deleted, it would have been wise to approve the text of the composite amendment. In view of the fact that the triple resolution had been rejected, he questioned whether it was worth while to continue consideration of the *Ad Hoc* Committee draft.

Mr. INGLES (Philippines) would have preferred the original text of article VIII of the draft convention prepared by the *Ad Hoc* Committee, which had been broader in scope than that of the triple amendment. He pointed out that the crime of genocide was reprehensible even when it did not involve a threat to international peace and security.

The Philippine delegation would have supported the triple amendment in its original form as a compromise proposal but it had opposed the revised text, which would undermine the authority of some of the organs of the United Nations. His delegation had wished to preserve the rights of Member States to appeal to the organs they chose.

Mr. Ti-tsun LI (China) had opposed the deletion of article VIII of the draft convention and had also voted against the triple amendment, because it was not as complete and comprehensive as the text of article VIII and did not impress

M. CORREA (Equateur) a voté en faveur de la suppression de l'article VIII du projet de convention et contre l'amendement commun, car la Charte expose clairement les droits des Etats Membres de faire appel aux organes des Nations Unies; il n'est donc pas nécessaire d'énoncer à nouveau ces droits dans un autre document.

Il a demandé le droit d'expliquer son appel contre une décision et signale qu'on a déjà recouru à cette procédure, notamment au cours des 93ème et 101ème séances de la Sixième Commission.

Le PRÉSIDENT déclare que, dans les exemples mentionnés par le représentant de l'Equateur, l'explication a été fournie par le représentant ayant présenté un appel, avant que l'appel ait été officiellement formulé et que le Président n'a pas été en mesure de prévoir les intentions des orateurs.

M. CHAUMONT (France) considère qu'en supprimant le dernier membre de phrase de l'article VII du projet de convention (98ème séance) et en rejetant l'amendement commun, la Commission a non seulement refusé de saisir les organes des Nations Unies du crime de génocide mais qu'elle a retiré la question de la juridiction d'un tribunal international. Il n'y a donc pas d'organe compétent pour connaître des crimes de génocide.

M. DIHIGO (Cuba) a voté contre l'amendement commun car les dispositions qu'il contient figurent déjà aux Articles 34, 35 et 37 de la Charte. L'article X du projet de convention donne compétence à la Cour internationale de Justice. Si la Commission avait adopté l'article VIII du projet du Comité spécial, deux organes différents auraient eu compétence sur la question. La délégation de Cuba est en faveur de l'attribution de juridiction à la Cour internationale de Justice car l'emploi du veto au Conseil de sécurité empêche souvent cet organe d'agir.

M. RAAFAT (Egypte) estime que, puisque la dernière partie de l'article VII a été supprimée, on aurait bien fait d'approuver le texte de la résolution commune. Etant donné que l'amendement commun a été rejeté, le représentant de l'Egypte se demande s'il y a intérêt à continuer l'examen du projet du Comité spécial.

M. INGLES (Philippines) aurait préféré le texte initial de l'article VIII du projet de convention préparé par le Comité spécial, texte d'une portée plus étendue que celui de l'amendement commun. Il fait remarquer que le crime de génocide est condamnable même s'il n'entraîne pas une menace à la paix et à la sécurité internationales.

La délégation des Philippines aurait appuyé, à titre de compromis, l'amendement commun sous sa forme initiale, mais elle a combattu le texte remanié qui, d'après elle, saperait l'autorité de certains organes des Nations Unies. La délégation des Philippines a voulu préserver les droits des Etats Membres de faire appel aux organes de leur choix.

M. Ti-tsun LI (Chine) s'est opposé à la suppression de l'article VIII du projet de convention; il a voté contre l'amendement commun parce que cet amendement n'était pas aussi complet et n'avait pas une portée aussi étendue que l'article

the Chinese delegation as being an acceptable substitute for that article.

Mr. TARAZI (Syria) had voted in favour of the triple amendment for the same reasons as those expressed by the representatives of Egypt and France.

Mr. SPIROPOULOS (Greece) had supported the text of the triple amendment without the addition of the words "or, if necessary, to the General Assembly" which, in his opinion, greatly modified the text. The addition of those words seemed to reduce the rights of the General Assembly as laid down in the Charter. He wished to point out, however, that the Security Council was not the only organ which could stop threats to peace. The General Assembly also had the right to recommend the employment of the measures provided for in Article 41 of the Charter.

Mr. PESCATORE (Luxembourg) did not agree with the representative of France when he said that by its rejection of the triple amendment, the Committee had excluded the jurisdiction of the organs of the United Nations. The Luxembourg delegation considered that the points mentioned in the triple amendment were already covered by the provisions of the Charter.

Mr. DE BEUS (Netherlands) had favoured the deletion of article VIII of the draft convention and had opposed the triple amendment because his delegation considered that a restatement of rights which were already set forth in the Charter was superfluous and might even be harmful.

Mr. MESSINA (Dominican Republic) had voted against the triple amendment because all the necessary provisions with regard to the question were contained in Article 33 of the Charter.

Mr. DEMESMIN (Haiti) had voted for the triple amendment because he had believed it was indispensable to find some replacement for article VIII since trial by a competent international tribunal had been deleted from article VII.

He pointed out that crimes of genocide did not necessarily have to involve a dispute between States, and provision for such a contingency should be made.

The Haitian delegation might abstain from voting on the convention, because no competence in the matter would be left to the Security Council and the convention as it was then worded was ineffective.

Mr. PÉREZ PEROZO (Venezuela) stated that his delegation had originally favoured the *Ad Hoc* Committee's text of article VIII. When that article had been deleted, the Venezuelan delegation had supported the original joint amendment, until the phrase "if necessary, the General Assembly" had been added. It had then been obliged to reverse its decision and vote against the triple amendment.

Mr. SUNDARAM (India) had voted for the deletion of article VIII and had opposed the triple amendment. He agreed with the remarks made by the representative of the Netherlands.

Mr. MAÛRTUA (Peru) had explained his reasons for opposing the proposal during the 101st

VIII et ne pouvait donc, à son avis, remplacer l'article en question.

M. TARAZI (Syrie) a voté en faveur de l'amendement commun pour les raisons qui ont été exposées par les représentants de l'Egypte et de la France.

M. SPIROPOULOS (Grèce) a appuyé le texte de l'amendement commun, sans l'addition des mots "ou, en cas de besoin, l'Assemblée générale" qui, à son avis, modifient considérablement le texte. L'addition de ces mots semble réduire les droits de l'Assemblée générale tels qu'ils sont exprimés dans la Charte. Il tient à souligner, cependant, que le Conseil de sécurité n'est pas le seul organisme qui puisse mettre fin aux menaces contre la paix. L'Assemblée générale a aussi le droit de recommander l'application des mesures prévues par l'Article 41 de la Charte.

M. PESCATORE (Luxembourg) n'est pas d'accord avec le représentant de la France lorsqu'il déclare qu'en rejetant l'amendement commun, la Commission a décliné la compétence des organismes des Nations Unies. La délégation du Luxembourg considère que les points mentionnés dans l'amendement commun sont déjà traités dans la Charte.

M. DE BEUS (Pays-Bas) s'est déclaré en faveur de la suppression de l'article VIII du projet de convention et s'est opposé à l'amendement commun parce que sa délégation considère qu'une nouvelle déclaration des droits qui sont déjà proclamés par la Charte est superflue et peut même être nuisible.

M. MESSINA (République Dominicaine) a voté contre l'amendement commun parce que toutes les dispositions utiles concernant cette question sont déjà prévues à l'Article 33 de la Charte.

M. DEMESMIN (Haïti) a voté en faveur de l'amendement commun parce qu'il pensait qu'il était indispensable de remplacer l'article VIII, étant donné qu'on avait supprimé, dans le texte de l'article VII, la mention d'un jugement par un tribunal international compétent.

Il souligne que les crimes de génocide n'entraînent pas nécessairement des différends entre les Etats et il y a lieu de prévoir des dispositions en conséquence.

La délégation d'Haïti s'abstiendra sans doute de voter sur la convention parce que le Conseil de sécurité n'aurait aucune compétence en la matière et parce que la convention, telle qu'elle est rédigée, est inefficace.

M. PÉREZ PEROZO (Venezuela) déclare que sa délégation a d'abord appuyé le texte de l'article VIII présenté par le Comité spécial. Lorsque cet article a été supprimé, la délégation du Venezuela a appuyé l'amendement commun primitif jusqu'à ce que les mots "ou, en cas de besoin, l'Assemblée générale" eurent été ajoutés. Sa délégation s'est trouvée alors dans l'obligation de revenir sur sa décision et de voter contre l'amendement commun.

M. SUNDARAM (Inde) a voté en faveur de la suppression de l'article VIII et contre l'amendement commun. Il approuve les observations faites par le représentant des Pays-Bas.

M. MAÛRTUA (Pérou) a déjà expliqué, au cours de la 101ème séance, les raisons qu'il a de

meeting. Dual jurisdiction would involve political jurisdiction which, he feared, would prove detrimental to the convention, because it would impose new tasks on the already heavily burdened Security Council.

Mr. MOROZOV (Union of Soviet Socialist Republics) stated that his delegation still favoured the triple amendment and would fight for the restoration of article VIII, because it was necessary to guarantee, in principle, the intervention of the United Nations for enforcement of the provisions of the convention.

He did not agree that the addition of the words "or, if necessary, the General Assembly" modified the text substantially. He considered that there was good reason to review the decision which had been made to delete article VIII in its original form. If some States had voted against the triple amendment in its new form and article VIII as well, they should be given the opportunity to reconsider their decision. Although the original text of article VIII had not, in principle, been unacceptable to the USSR delegation, his delegation had voted in favour of deleting it in the hope that a better text could be drafted. The Soviet Union delegation was ready, however, to reconsider and vote in favour of the original text of article VIII as drafted by the *Ad Hoc* Committee. He proposed, therefore, that in accordance with the provision of rule 112 of the rules of procedure, the decision to delete article VIII should be reconsidered by the Committee.

Mr. MAKTOS (United States of America) felt that rule 112 should be applied only in exceptional cases. He opposed the USSR proposal because it would mean that a member would have three opportunities to try to convince a Committee of his delegation's point of view.

Mr. DIHIGO (Cuba) considered that an abnormal voting procedure had been followed with regard to article VIII and the amendments thereto. If the triple amendment had been voted on first, the Committee would still have the text of article VIII before it for consideration.

For that reason, although the Cuban delegation was opposed to both article VIII and the triple amendment, it believed that the Committee should be given the opportunity to reconsider its decision.

Mr. MAÚRTUA (Peru) agreed with the remarks made by the representative of the United States and would oppose reconsideration of article VIII.

The CHAIRMAN put to the vote the proposal to reopen consideration of article VIII.

The representative of the UKRAINIAN SSR requested that the vote be taken by roll-call.

Denmark, having been drawn by lot by the Chairman, voted first:

In favour: Denmark, Egypt, El Salvador, France, Greece, Haiti, Iran, Norway, Pakistan, Philippines, Poland, Saudi Arabia, Sweden, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Venezuela, Yugoslavia, Afghanistan, Australia, Bolivia,

s'opposer à la proposition. Une double juridiction comportera une juridiction politique qui, il faut le craindre, sera préjudiciable à la convention, car elle imposera de nouvelles tâches au Conseil de sécurité déjà lourdement chargé.

M. MOROZOV (Union des Républiques socialistes soviétiques) déclare que sa délégation continue d'appuyer l'amendement commun et défendra le rétablissement de l'article VIII, parce qu'il est nécessaire de garantir, en principe, l'intervention de l'Organisation des Nations Unies pour assurer l'application des dispositions de la convention.

Il n'est pas d'avis que l'addition des mots "ou, en cas de besoin, l'Assemblée générale" modifie sensiblement le texte. Il estime qu'il y a de bonnes raisons de revenir sur la décision de supprimer l'article VIII sous sa forme primitive. Si certains Etats ont voté contre l'amendement commun sous sa nouvelle forme et contre l'article VIII, on doit leur donner la possibilité de reconsidérer leur décision. Le texte primitif de l'article VIII n'était pas, en principe, inacceptable pour la délégation de l'URSS, si elle a voté en faveur de la suppression de cet article, c'est qu'elle espérait qu'on pourrait rédiger un texte plus satisfaisant. Cette délégation est prête, toutefois, à reconsidérer la question et à voter en faveur du texte de l'article VIII élaboré par le Comité spécial. M. Morozov propose, en conséquence, que, conformément aux dispositions de l'article 112 du règlement intérieur, la Commission reconsidère sa décision de supprimer l'article VIII.

M. MAKTOS (Etats-Unis d'Amérique) estime que l'article 112 ne doit s'appliquer que dans des cas exceptionnels. Il s'oppose à la proposition de l'URSS parce qu'elle aurait surtout comme conséquence de permettre à un membre d'essayer, à trois reprises, de convaincre la Commission du bien-fondé du point de vue de sa délégation.

M. DIHIGO (Cuba) considère qu'en ce qui concerne l'article VIII et ses amendements, on a suivi une procédure de vote anormale. Si l'on avait voté d'abord sur l'amendement commun, la Commission aurait devant elle le texte de l'article VIII et pourrait l'examiner.

Pour cette raison, et bien que la délégation de Cuba soit opposée à la fois à l'article VIII et à l'amendement commun, elle pense que l'on doit donner à la Commission la possibilité de reconsidérer sa décision.

M. MAÚRTUA (Pérou) approuve les observations du représentant des Etats-Unis et s'opposera à un nouvel examen de l'article VIII.

Le PRÉSIDENT met aux voix la proposition de rouvrir la discussion sur l'article VIII.

Le représentant de la RSS D'UKRAINE demande l'appel nominal.

Il est procédé au vote par appel nominal.

L'appel commence par le Danemark, dont le nom est tiré au sort par le Président:

Votent pour: Danemark, Egypte, Salvador, France, Grèce, Haïti, Iran, Norvège, Pakistan, Philippines, Pologne, Arabie saoudite, Suède, Syrie, République socialiste soviétique d'Ukraine, Union des Républiques socialistes soviétiques, Uruguay, Venezuela, Yougoslavie, Afghanistan,

Byelorussian Soviet Socialist Republic, China, Colombia, Cuba, Czechoslovakia.

Against: Dominican Republic, Ecuador, India, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Peru, Siam, Turkey, Union of South Africa, United Kingdom, United States of America, Argentina, Canada, Chile.

Abstaining: Brazil.

The result of the vote was 27 in favour and 17 against, with 1 abstention.

The proposal was not adopted, having failed to obtain the required two-thirds majority.

Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) complimented the Chairman on the skilful way in which he had handled the difficult questions of procedure which had arisen. With regard to rules 119 and 120 of the rules of procedure, he wished to state that the question of procedure with regard to amendments and proposals had been thoroughly discussed in Sub-Committee 3 of the Sixth Committee in 1947. Some delegations had suggested that no difference should be made between amendments and proposals and that they should all be grouped together. The Chairman and the Committee would then determine which was the furthest removed from the original proposal and therefore to be voted on first. That suggestion had not been accepted by the Sixth Committee or the General Assembly. It was for that reason that rules 119 and 120 had been written into the rules of procedure. He clarified the point that it is not the title which a delegation gave to its text which decided whether a motion was an amendment or a proposal. A motion was an amendment if it added to the original text of the proposal, deleted a part of the original proposal, or revised or substituted a part of the proposal. On the other hand, a motion for complete deletion or complete substitution was not an amendment within the meaning of rule 11 but a proposal in the sense of rule 120. Amendments were voted on in order, beginning with the furthest removed. Proposals were voted on in the order of their submission, unless the Committee decided otherwise. When there was a proposal for complete deletion and another for complete substitution, they were not amendments but proposals and should be voted on in the order of their presentation. When complete deletion was voted, it depended entirely on the will of the Committee to decide according to rule 120 whether a further vote should be taken on substitution.

The new rules were much better than the rejected provisional rules. Nevertheless, their application might still give rise to difficulties. In the case under consideration, the difficulty stemmed from the fact that the Committee was confronted with a whole draft convention and not with relatively short proposals. The whole convention might be considered as a single proposal and in the case in point a proposal for the deletion of a whole article was an amendment to delete only a part of the whole. On the contrary, if each article were considered as a separate proposal, a motion for complete deletion or complete substitution of

Australie, Bolivie, République socialiste soviétique de Biélorussie, Chine, Colombie, Cuba, Tchécoslovaquie.

Votent contre: République Dominicaine, Equateur, Inde, Luxembourg, Mexique, Pays-Bas, Nouvelle-Zélande, Nicaragua, Pérou, Siam, Turquie, Union Sud-Africaine, Royaume-Uni, Etats-Unis d'Amérique, Argentine, Canada, Chili.

S'abstient: le Brésil.

Il y a 27 voix pour, 17 voix contre, et une abstention.

N'ayant pas obtenu la majorité requise des deux tiers, la proposition n'est pas adoptée.

M. KERNO (Secrétaire général adjoint chargé du Département juridique) félicite le Président pour l'habileté avec laquelle il a traité les difficiles questions de procédure qui se sont posées. En ce qui concerne les articles 119 et 120 du règlement intérieur, il tient à déclarer que la question de procédure touchant les amendements et les propositions a été discutée à fond, en 1947, par la Sous-Commission 3 de la Sixième Commission. Certaines délégations ont proposé que l'on ne fasse pas de différence entre les amendements et les propositions et qu'on les groupe. Le Président et la Commission pourraient ainsi déterminer quel texte est le plus éloigné de la proposition originale, de façon à voter en premier lieu sur celui-là. Cette proposition n'a pas été acceptée ni par la Sixième Commission ni par l'Assemblée générale, et c'est pourquoi le règlement contient les deux articles 119 et 120. M. Kerno explique que ce n'est pas le titre qu'une délégation donne à son texte qui détermine s'il agit d'un amendement ou d'une proposition. Il s'agit d'un amendement si le texte constitue une addition, une suppression partielle ou une revision du texte original. Au contraire, une proposition qui vise à la suppression complète d'un texte ou au remplacement d'un texte par un autre, n'est pas un amendement au sens de l'article 119, mais une proposition au sens de l'article 120. Le vote sur les amendements a lieu en commençant par celui qui s'éloigne le plus du texte original. Le vote sur les propositions suit l'ordre dans lequel ces propositions ont été soumises, sauf si la Commission en décide autrement. Lorsque l'on se trouve en présence d'une proposition tendant à la suppression complète d'un texte et d'une autre tendant à remplacer ce texte par un autre, s'il s'agit là de deux propositions et non pas de deux amendements, le vote doit donc suivre l'ordre dans lequel ces propositions ont été présentées. Lorsque la suppression d'un texte est acquise à la suite d'un vote, il appartient à la Commission de décider, conformément à l'article 120, si la question du remplacement de ce texte par un autre texte sera mise aux voix.

Les nouveaux articles du règlement sont bien supérieurs aux articles provisoires qui ont été abandonnés. Toutefois, ces nouveaux articles peuvent encore donner lieu à des difficultés d'application. Dans le cas présent, la difficulté provient du fait que la Commission est en présence d'un projet complet de convention et non pas de quelques propositions ayant un texte relativement court. L'on peut considérer que la convention dans son ensemble constitue une seule proposition et, dans ce cas, la proposition qui tend à supprimer un article entier de la convention, constitue un amendement visant à supprimer une

the article was not an amendment but a proposal to be dealt with according to rule 120.

With regard to rule 102, Mr. Kerno fully supported the Chairman's ruling. If a point of order were raised, the Chairman was obliged to give his ruling immediately, without a discussion. If his ruling were challenged, the appeal should immediately be put to the vote, without any discussion.

The meeting rose at 1.05 p.m.

HUNDRED AND THIRD MEETING

Held at the Palais de Chaillot, Paris, on Friday, 12 November 1948, at 3.15 p.m.

Chairman: Mr. R. J. ALFARO (Panama).

52. Continuation of the consideration of the draft convention on genocide [*E/794*]: report of the Economic and Social Council [*A/633*]

ARTICLE X

The CHAIRMAN opened the discussion on article X. He recalled that the following delegations had submitted amendments to the text of the *Ad Hoc* Committee: Union of Soviet Socialist Republics [*A/C.6/215/Rev.1*]; Belgium [*A/C.6/217*]; United Kingdom [*A/C.6/236*]; Belgium and United Kingdom [*A/C.6/258*]. Two amendments had been proposed by India [*A/C.6/260*][1] and Haiti [*A/C.6/263*][2] to the joint amendment submitted by Belgium and the United Kingdom.

Mr. FITZMAURICE (United Kingdom) stated that he had withdrawn the original United Kingdom amendment [*A/C.6/236*], substituting for it the joint amendment [*A/C.6/258*]. In the absence of the representative of Belgium, it was impossible to say definitely whether the original Belgian amendment would be withdrawn, but Mr. Fitzmaurice thought that it had also been withdrawn in favour of the joint text.

Mr. DIGNAM (Australia) observed that the decision to delete article VIII of the convention (101st meeting) prejudged the fate of any provision based on the principle contained in that article, namely, action by organs of the United Nations. Article X dealt with the settlement of disputes by the International Court of Justice, which was one of the competent organs of the United Nations covered by article VIII. Strictly speaking, therefore, the Committee should not discuss article X. If it did so it should be for the definite purpose of rectifying the mistake of having deleted article VIII.

The Australian delegation considered that a clause should be inserted in article X concerning

[1] *Amendment submitted by India:* For the words "at the request of any of the High Contracting Parties" substitute the words "at the request of any of the parties to the dispute."

[2] *Amendment submitted by Haiti:* Add at the end of the text "or of any victims of the crime of genocide (groups or individuals)".

partie d'un tout. Mais si l'on considère chaque article de la convention comme une proposition séparée, la proposition de supprimer cet article ou de remplacer son texte par un autre texte ne constitue plus un amendement, mais bien une proposition à laquelle s'applique l'article 120.

En ce qui concerne l'article 102, M. Kerno appuie entièrement la décision du Président. Lorsqu'une question d'ordre est soulevée, le Président est tenu de faire connaître sa décision immédiatement et sans discussion. S'il est fait appel de la décision du Président, l'appel doit être immédiatement mis aux voix, sans discussion.

La séance est levée à 13 h. 5.

CENT-TROISIEME SEANCE

Tenue au Palais de Chaillot, Paris, le vendredi 12 novembre 1948, à 15 h. 15.

Président: M. R. J. ALFARO (Panama).

52. Suite de l'examen du projet de convention sur le génocide [*E/794*]: rapport du Conseil économique et social [*A/633*]

ARTICLE X

Le PRÉSIDENT ouvre le débat sur l'article X. Il rappelle que le texte du Comité spécial est l'objet de plusieurs amendements, présentés par les délégations suivantes: Union des Républiques socialistes soviétiques [*A/C.6/215/Rev.1*], Belgique [*A/C.6/217*], Royaume-Uni [*A/C.6/236*], Belgique et Royaume-Uni [*A/C.6/258*]. L'amendement commun présenté par la Belgique et le Royaume-Uni est l'objet de deux amendements proposés par les délégations de l'Inde [*A/C.6/260*][1] et d'Haïti [*A/C.6/263*][2].

M. FITZMAURICE (Royaume-Uni) déclare que l'amendement primitif du Royaume-Uni [*A/C.6/236*] est retiré et remplacé par l'amendement commun [*A/C.6/258*]. Le représentant de la Belgique étant absent, il n'est pas possible d'avoir une réponse formelle sur le retrait éventuel de l'amendement primitif de la Belgique, mais M. Fitzmaurice pense qu'il est également retiré en faveur de l'amendement commun.

M. DIGNAM (Australie) fait remarquer que la décision de supprimer l'article VIII de la convention (101ème séance) préjuge le sort de toute disposition ayant pour base le principe contenu dans l'article VIII, à savoir l'action des organes des Nations Unies. Or, l'article X traite du règlement des différends par la Cour internationale de Justice, qui est un des organes compétents des Nations Unies envisagés à l'article VIII. Théoriquement, la Commission ne devrait donc pas examiner l'article X. Si elle le fait, il faut que ce soit dans un but concret, c'est-à-dire avec l'intention de réparer l'erreur commise en supprimant l'article VIII.

La délégation australienne estime qu'il faudrait introduire dans les dispositions de l'article X

[1] *Amendement de l'Inde:* Remplacer les mots "à la requête d'une Haute Partie contractante" par "à la requête d'une partie au différend".

[2] *Amendement d'Haïti:* Ajouter à la fin de ce texte: "ou de toutes victimes du crime de génocide (groupes ou individus)."

Annex 51

UNGA, Sixth Committee, Hundred and Third Meeting, Continuation of the consideration of the draft convention on genocide [E/794]: report to the Economic and Social Council [A/633] (12 November 1948), UN doc. A/C.6/SR.103 [extract]

Available at:

http://undocs.org/A/C.6/SR.103

the article was not an amendment but a proposal to be dealt with according to rule 120.

With regard to rule 102, Mr. Kerno fully supported the Chairman's ruling. If a point of order were raised, the Chairman was obliged to give his ruling immediately, without a discussion. If his ruling were challenged, the appeal should immediately be put to the vote, without any discussion.

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Mr. FITZMAURICE (United Kingdom) stated that he had withdrawn the original United Kingdom amendment [*A/C.6/236*], substituting for it the joint amendment [*A/C.6/258*]. In the absence of the representative of Belgium, it was impossible to say definitely whether the original Belgian amendment would be withdrawn, but Mr. Fitzmaurice thought that it had also been withdrawn in favour of the joint text.

Mr. DIGNAM (Australia) observed that the decision to delete article VIII of the convention (101st meeting) prejudged the fate of any provision based on the principle contained in that article, namely, action by organs of the United Nations. Article X dealt with the settlement of disputes by the International Court of Justice, which was one of the competent organs of the United Nations covered by article VIII. Strictly speaking, therefore, the Committee should not discuss article X. If it did so it should be for the definite purpose of rectifying the mistake of having deleted article VIII.

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partie d'un tout. Mais si l'on considère chaque article de la convention comme une proposition séparée, la proposition de supprimer cet article ou de remplacer son texte par un autre texte ne constitue plus un amendement, mais bien une proposition à laquelle s'applique l'article 120.

En ce qui concerne l'article 102, M. Kerno appuie entièrement la décision du Président. Lorsqu'une question d'ordre est soulevée, le Président est tenu de faire connaître sa décision immédiatement et sans discussion. S'il est fait appel de la décision du Président, l'appel doit être immédiatement mis aux voix, sans discussion.

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CENT-TROISIEME SEANCE

Tenue au Palais de Chaillot, Paris, le vendredi 12 novembre 1948, à 15 h. 15.

Président: M. R. J. ALFARO (Panama).

52. Suite de l'examen du projet de convention sur le génocide [*E/794*]: rapport du Conseil économique et social [*A/633*]

ARTICLE X

Le PRÉSIDENT ouvre le débat sur l'article X. Il rappelle que le texte du Comité spécial est l'objet de plusieurs amendements, présentés par les délégations suivantes: Union des Républiques socialistes soviétiques [*A/C.6/215/Rev.1*], Belgique [*A/C.6/217*], Royaume-Uni [*A/C.6/236*], Belgique et Royaume-Uni [*A/C.6/258*]. L'amendement commun présenté par la Belgique et le Royaume-Uni est l'objet de deux amendements proposés par les délégations de l'Inde [*A/C.6/260*][1] et d'Haïti [*A/C.6/263*][2].

M. FITZMAURICE (Royaume-Uni) déclare que l'amendement primitif du Royaume-Uni [*A/C.6/236*] est retiré et remplacé par l'amendement commun [*A/C.6/258*]. Le représentant de la Belgique étant absent, il n'est pas possible d'avoir une réponse formelle sur le retrait éventuel de l'amendement primitif de la Belgique, mais M. Fitzmaurice pense qu'il est également retiré en faveur de l'amendement commun.

M. DIGNAM (Australie) fait remarquer que la décision de supprimer l'article VIII de la convention (101ème séance) préjuge le sort de toute disposition ayant pour base le principe contenu dans l'article VIII, à savoir l'action des organes des Nations Unies. Or, l'article X traite du règlement des différends par la Cour internationale de Justice, qui est un des organes compétents des Nations Unies envisagés à l'article VIII. Théoriquement, la Commission ne devrait donc pas examiner l'article X. Si elle le fait, il faut que ce soit dans un but concret, c'est-à-dire avec l'intention de réparer l'erreur commise en supprimant l'article VIII.

La délégation australienne estime qu'il faudrait introduire dans les dispositions de l'article X

[1] *Amendement de l'Inde:* Remplacer les mots "à la requête d'une Haute Partie contractante" par "à la requête d'une partie au différend".

[2] *Amendement d'Haïti:* Ajouter à la fin de ce texte: "ou de toutes victimes du crime de génocide (groupes ou individus)."

organs of the United Nations other than the International Court of Justice, which could take useful action in suppressing genocide.

The CHAIRMAN stated that all ideas expressed during the discussions should be studied; and, moreover, that the rejection of a text did not imply that its substance could not be incorporated in another article. Nevertheless, the Committee must confine itself to the consideration of the text of article X proposed by the *Ad Hoc* Committee, and of the amendments submitted thereto in accordance with the rules of procedure.

Mr. SUNDARAM (India) thought that it would be better not to regard the original Belgian amendment [*A/C.6/217*] as withdrawn. The joint amendment submitted by Belgium and the United Kingdom constituted an addition to the matters likely to give rise to disputes which would be submitted to the International Court of Justice; that addition might lead certain delegations to reject the joint amendment. If the original Belgian amendment were withdrawn, the Committee would be obliged to adopt the text of the *Ad Hoc* Committee, whereas the Belgian text was preferable. Consequently, if the Belgian delegation withdrew its amendment, the Indian representative would reintroduce it on its own behalf in accordance with rule 73 of the rules of procedure.

After a discussion on the question as to whether the Committee was still seized of the Belgian amendment, in the course of which the CHAIRMAN, Mr. KERNO (Assistant Secretary-General in charge of the Legal Department), Mr. MAKTOS (United States of America), Mr. SPIROPOULOS (Greece) and Mr. RAAFAT (Egypt) expressed their views, Mr. ABDOH (Iran) stated that if the original Belgian amendment [*A/C.6/217*] had not been withdrawn by its author, the Committee should examine it and put it to the vote; if, however, it had been withdrawn, the delegation of Iran would reintroduce it on its own behalf in conformity with rule 73 of the rules of procedure.

The CHAIRMAN took note of the fact that the Belgian amendment had become an amendment submitted by Iran.

In reply to a question by Mr. DE BEUS (Netherlands), the CHAIRMAN stated that the second Belgian amendment [*A/C.6/252*] had been replaced by the joint amendment of the Belgian and United Kingdom delegations. He called upon the Committee to proceed to the general discussion of that joint amendment [*A/C.6/258*].

Mr. MAKTOS (United States of America) remarked that the joint amendment had been intended to replace the original amendments submitted by Belgium and the United Kingdom; it was, in principle, an improvement on those texts; it would therefore be better first to decide on the Belgian amendment.

The representative of the United States accordingly made a formal motion that that amendment should be discussed first.

The CHAIRMAN pointed out that the joint amendment was furthest removed in substance from the text of the *Ad Hoc* Committee; consequently, in conformity with rule 119 of the rules

une clause relative aux organes des Nations Unies, autres que la Cour internationale de Justice, dont l'action pourrait être utile dans la lutte contre le génocide.

Le PRÉSIDENT déclare que toutes les idées exprimées au cours des débats doivent être étudiées et que, d'autre part, le rejet d'un texte ne signifie pas que sa substance ne peut pas être incorporée dans un autre article; toutefois, la Commission doit s'en tenir actuellement à l'examen du texte de l'article X proposé par le Comité spécial et des amendements présentés conformément au règlement intérieur.

M. SUNDARAM (Inde) estime qu'il vaut mieux considérer que l'amendement primitif de la Belgique [*A/C.6/217*] n'a pas été retiré. En effet, l'amendement commun présenté par la Belgique et le Royaume-Uni consiste à ajouter aux éléments susceptibles de provoquer des différends qui seront soumis à la Cour internationale de Justice deux éléments importants; cette addition peut inciter certaines délégations à rejeter l'amendement commun. Si l'amendement primitif de la Belgique était retiré, la Commission se verrait dans l'obligation d'adopter le texte du Comité spécial, alors que celui de la Belgique est préférable. En conséquence, si la délégation de la Belgique retirait son premier amendement, la délégation de l'Inde le prendrait à son compte, conformément à l'article 73 du règlement intérieur.

A la suite d'un échange de vues sur la question de savoir si la Commission est encore saisie du premier amendement belge, auquel prennent part le PRÉSIDENT, M. KERNO (Secrétaire général adjoint chargé du Département juridique), M. MAKTOS (Etats-Unis d'Amérique), M. SPIROPOULOS (Grèce) et M. RAAFAT (Egypte), M. ABDOH (Iran) déclare que si l'amendement primitif de la Belgique [*A/C.6/217*] n'est pas retiré par son auteur, la Commission doit l'examiner et le mettre aux voix; si cet amendement est retiré, la délégation de l'Iran le présente en son propre nom, conformément à l'article 73.

Le PRÉSIDENT prend note que l'amendement de la Belgique est devenu un amendement de l'Iran.

A une question de M. DE BEUS (Pays-Bas), le PRÉSIDENT répond que le second amendement belge [*A/C.6/252*] a été remplacé par l'amendement commun des délégations de la Belgique et du Royaume-Uni. Il invite la Commission à entamer le débat général sur l'amendement commun de la Belgique et du Royaume-Uni [*A/C.6/258*].

M. MAKTOS (Etats-Unis d'Amérique) fait observer que l'amendement commun a été conçu pour remplacer les amendements primitifs de la Belgique et du Royaume-Uni; il constitue, en principe, une amélioration de ces textes; il serait donc opportun de se prononcer tout d'abord sur l'amendement de la Belgique.

En conséquence, le représentant des Etats-Unis présente une motion formelle, pour demander que cet amendement soit examiné en premier lieu.

Le PRÉSIDENT fait observer que l'amendement commun est celui qui s'éloigne le plus, quant au fond, du texte proposé par le Comité spécial; en conséquence, la Commission doit d'abord se pro-

The representative of Haiti added that the crime of genocide could be committed without world peace being imperilled. That was why it was advisable to contemplate putting the principles of the United Nations into effect. The United Nations Charter, unlike the Covenant of the League of Nations, provided not only for respect on an international plane for the rights of States, but also for respect for the rights of individuals. Respect for human life should be guaranteed and it was for the International Court of Justice, in pursuance of a particular convention, to ensure that guarantee. Finally, it was unquestionable that the victims were best qualified to lay the matter before the International Court of Justice.

Article 34 of the Statute of the Court provided that "The Court, subject to and in conformity with its rules, may request of public international organizations information relevant to cases before it . . .". That Article proved that the Statute of the Court was not inconsistent with the provisions of the amendment submitted by the delegation of Haiti.

Mr. SUNDARAM (India) pointed out that in the first amendment submitted by the United Kingdom delegation [*A/C.6/236*], it was laid down that the matter should, "at the request of any party to the dispute," be referred to the International Court of Justice. In the joint amendment of Belgium and the United Kingdom [*A/C.6/258*] it was provided that: "Any dispute . . . shall be submitted to the International Court of Justice at the request of any of the High Contracting Parties". The representative of India felt that that change of wording did not improve the text. It would be advisable, on the contrary, to replace that phrase by the words "at the request of any of the parties to such dispute", as suggested by the Indian amendment [*A/C.6/260*].

The Egyptian representative had said that if the Committee adopted the joint Belgian and United Kingdom amendment, the last part of the text of article X proposed by the *Ad Hoc* Committee should be added. The representative of India considered that since the reference to an international criminal court had been omitted from article VII, and since it would be a long time before such a court was established, it was useless at that stage to provide against such a contingency in article X.

Mr. Sundaram recalled, moreover, that the joint Belgian and United Kingdom amendment added the phrase "or fulfilment" and that the representative of Greece had said that there was no great difference between applying and fulfilling a convention. The representative of India felt, however, that the word "application" included the study of circumstances in which the convention should or should not apply, while the word "fulfilment" referred to the compliance or non-compliance of a party with the provisions of the convention. The word "fulfilment" therefore had a much wider meaning.

The representative of India considered that the inclusion of all disputes relating to the responsibility of a State for any of the acts enumerated in articles II and IV would certainly give rise to serious difficulties. It would make it possible for an unfriendly State to charge, on vague and

Le représentant d'Haïti ajoute que le crime de génocide peut être commis sans que sa perpétration mette en péril la paix du monde. C'est pourquoi il convient d'envisager la mise en application des principes de l'Organisation des Nations Unies. En effet, à la différence du Pacte de la Société des Nations, la Charte des Nations Unies envisage non seulement le respect, sur le plan international, des droits des Etats, mais aussi le respect des droits des individus. Il convient de garantir le respect de la vie humaine et c'est à la Cour internationale de Justice, en exécution d'une convention spéciale, d'assurer cette garantie. Enfin, ce sont, sans aucun doute, les victimes qui sont les plus qualifiées pour saisir la Cour internationale de Justice.

L'Article 34 du Statut de la Cour prévoit que "La Cour, dans les conditions prescrites par son règlement, pourra demander aux organisations internationales publiques des renseignements relatifs aux affaires portées devant elle . . .". Cet Article prouve que le Statut de la Cour n'est pas incompatible avec les dispositions de l'amendement présenté par la délégation d'Haïti.

M. SUNDARAM (Inde) fait observer que dans le premier amendement présenté par la délégation du Royaume-Uni [*A/C.6/236*], il était stipulé que l'affaire, "à la demande de toute partie au différend" serait soumise à la Cour internationale de Justice". Dans l'amendement commun de la Belgique et du Royaume-Uni [*A/C.6/258*], il est stipulé que "tout différend . . . sera soumis à la Cour internationale de Justice à la requête d'une Haute Partie contractante". Le représentant de l'Inde estime que cette modification de rédaction n'améliore pas le texte. Il convient au contraire de remplacer cette formule par les mots "à la requête d'une partie au différend" ainsi que le propose l'amendement de l'Inde [*A/C.6/260*].

Le représentant de l'Egypte a déclaré que si l'amendement commun de la Belgique et du Royaume-Uni était adopté par la Commission, celle-ci devrait y joindre la dernière partie du texte de l'article X proposé par le Comité spécial. Mais, étant donné que l'on a supprimé, à l'article VIII, la mention du tribunal pénal international et qu'un tel tribunal ne sera pas établi d'ici longtemps, le représentant de l'Inde juge inutile, pour le moment, que le texte de l'article X tienne compte de cette éventualité.

M. Sundaram rappelle, par ailleurs, que l'amendement commun de la Belgique et du Royaume-Uni ajoute le terme "ou l'exécution" et que le représentant de la Grèce a déclaré qu'il n'existait pas une grande différence entre l'application et l'exécution de la convention. Le représentant de l'Inde estime cependant que le terme "application" comprend l'examen des conditions dans lesquelles la convention doit ou non s'appliquer, tandis que le terme "exécution" répond à la question de savoir si une partie satisfait ou non aux dispositions de la convention. Le terme "exécution" a donc une portée beaucoup plus large.

Le représentant de l'Inde estime que l'inclusion de tous les différends se rapportant à la responsabilité d'un Etat en ce qui concerne l'un quelconque des actes énumérés aux articles II et IV donnerait certainement lieu à de sérieuses difficultés. Un Etat animé d'intentions hostiles pourrait, en

unsubstantial allegations, that another State was responsible for genocide within its territory.

The representative of India said that those were the reasons why his delegation could not accept the joint Belgian and United Kingdom amendment.

Mr. PESCATORE (Luxembourg) recalled that certain representatives had stated that the concept of responsibility in that field was still unclear and that it was not known who might claim rights to reparations following the perpetration of a crime of genocide. It seemed, however, that the principle that no action could be instituted save by a party concerned in a case should be applied in that connexion. Such responsibility would thus arise whenever genocide was committed by a State in the territory of another State. In that case, the State which had suffered damage would have a right to reparation. The joint Belgian and United Kingdom amendment gave the International Court of Justice the opportunity of deciding whether or not damages should be granted, and it would be for the plaintiff to prove the injury sustained.

Mr. MAKTOS (United States of America) called attention to the fact that, when he had spoken previously on a point of order, he had had in mind the second Belgian amendment [*A/C.6/252*]; he had therefore asked that that amendment should be discussed first. As it was in fact the first Belgian amendment [*A/C.6/217*] which the Iranian delegation had reintroduced, it had been perfectly logical to begin by discussing the joint amendment, in accordance with the Chairman's ruling.

Mr. AGHA SHAHI (Pakistan) considered that the joint Belgian and United Kingdom amendment aimed at reviving the principle of an international court to sentence those responsible for the crime of genocide, a principle which the Committee had recently rejected (98th meeting).

The representative of Pakistan considered, moreover, that that amendment had not been sufficiently clearly drafted. The expression "responsibility of a State", in particular, was too abstract for such a matter as criminal law, which called for accuracy and clarity. According to that amendment, the State would have to be given a fictitious legal character, a convenient procedure in civil or commercial matters but not in criminal law nor, *a fortiori*, in the convention.

The representative of France had said that it was difficult to interpret the expression "responsibility of a State", because article X did not provide for the conviction of a State, but dealt with damage caused by the crime of genocide and reparation for such damage. The representative of Pakistan was doubtful as to the advisability of dealing with civil responsibility in a document which referred solely to a criminal matter. He would have preferred the words used in article V referring to the constitutionally responsible rulers (95th meeting) rather than the words "responsibility of a State". The former would make the text clearer and more accurate.

Mr. LAPOINTE (Canada) asked the United Kingdom representative what was meant by

effet, en s'appuyant sur des allégations vagues et sans fondement, accuser un autre Etat d'être responsable de génocide commis sur son propre territoire.

Pour toutes ces raisons, le représentant de l'Inde déclare que sa délégation ne peut accepter l'amendement commun de la Belgique et du Royaume-Uni.

M. PESCATORE (Luxembourg) rappelle que certains représentants ont déclaré que la notion de responsabilité, en ce domaine, était encore imprécise et qu'on ignorait qui pourrait faire valoir des droits à réparation à la suite d'un crime de génocide. Il semble, cependant, que la règle "pas d'intérêt, pas d'action" doive trouver ici son application. C'est ainsi que cette responsabilité existera chaque fois que le génocide aura été commis par un Etat sur le territoire d'un autre Etat. Dans ce cas, l'Etat qui aura subi des dommages aura un droit à réparation. L'amendement commun de la Belgique et du Royaume-Uni donne la possibilité à la Cour internationale de Justice de décider s'il y a lieu ou non d'accorder des dommages intérêts et ce sera au demandeur de prouver le dommage subi.

M. MAKTOS (Etats-Unis d'Amérique) signale que, lorsqu'il avait précédemment pris la parole sur une motion d'ordre, il pensait au second amendement belge [*A/C.6/252*] et c'est pourquoi il avait demandé que cet amendement soit discuté en premier lieu. Comme c'est, en fait, le premier amendement belge [*A/C.6/217*] qu'avait repris la délégation de l'Iran, il était parfaitement logique de commencer la discussion par l'amendement commun, conformément à la décision du Président.

M. AGHA SHAHI (Pakistan) estime que l'amendement commun de la Belgique et du Royaume-Uni tend à reprendre le principe d'une juridiction internationale chargée de condamner les responsables du crime de génocide, principe que la Commission a, d'ores et déjà, rejeté (98ème séance).

Le représentant du Pakistan estime, par ailleurs, que cet amendement n'est pas rédigé de façon suffisamment précise. En particulier, l'expression "responsabilité d'un Etat" est trop abstraite pour une matière telle que le droit criminel, qui exige de la précision et de la clarté. D'après cet amendement, il faudrait donner à l'Etat le caractère d'une fiction juridique, procédé commode en matière civile ou commerciale, mais pas en droit pénal ni, à plus forte raison, dans cette convention.

Le représentant de la France a déclaré qu'il était difficile d'interpréter l'expression "responsabilité d'un Etat", car l'article X ne vise pas la condamnation d'un Etat, mais traite des dommages entraînés par le crime de génocide et de la réparation de ces dommages. Le représentant du Pakistan estime qu'on peut douter de l'opportunité de traiter de la responsabilité civile dans un document qui porte uniquement sur une matière criminelle. Il préférerait à l'expression "responsabilité d'un Etat" les termes employés dans l'article V visant les Gouvernements constitutionnellement responsables (95ème séance), ceci pour rendre plus claire et plus précise la rédaction de ce texte.

M. LAPOINTE (Canada) demande au représentant du Royaume-Uni ce qu'il entend par "res-

Annex 52

UNGA, Sixth Committee, Hundred and Fourth Meeting, Continuation of the consideration of the draft convention on genocide [E/794]: report to the Economic and Social Council [A/633] (13 November 1948), UN doc. A/C.6/SR.104

Available at:

http://undocs.org/A/C.6/SR.104

of a State. Once that fact had been established, the State concerned would have to punish the offenders. The international responsibility of States thus entailed practical results.

The Bolivian representative thought that the joint Belgian and United Kingdom amendment considerably improved article X. On the other hand, the amendment submitted by the delegation of Haiti seemed inconsistent with Article 34 of the Statute of the Court.

The Bolivian delegation would therefore vote against the Haitian amendment.

Mr. FITZMAURICE (United Kingdom), replying to the Canadian representative, said that the responsibility envisaged by the joint Belgian and United Kingdom amendment was the international responsibility of States following a violation of the convention. That was civil responsibility, not criminal responsibility.

The question under discussion was not the criminal but the civil responsibility which provided for damages for acts of genocide. The obligation to provide for damages could exist only as a result of the admission of the offence by the State

The meeting rose at 5.55 p.m.

HUNDRED AND FOURTH MEETING

Held at the Palais de Chaillot, Paris, on Saturday, 13 November 1948, at 10.50 a.m.

Chairman: Mr. R. J. ALFARO (Panama).

53. Continuation of the consideration of the draft convention on genocide [*E/794*]: report of the Economic and Social Council [*A/633*]

APPOINTMENT OF A DRAFTING COMMITTEE

The CHAIRMAN proposed the appointment of a drafting committee consisting of the following members: Belgium, China, Cuba, Egypt, France, Poland, Union of Soviet Socialist Republics, United Kingdom, United States of America.

It was so agreed.

ARTICLE X (*continued*)

Mr. MOROZOV (Union of Soviet Socialist Republics) stated that the joint United Kingdom and Belgian amendment [*A/C.6/258*] was not acceptable to the USSR delegation because its adoption would not prevent acts of genocide or violations of the convention. The purpose of the amendment seemed to be to prevent any country from submitting to the Security Council or to the General Assembly any complaint in regard to acts of genocide, thereby preventing the United Nations from taking quick action. The mass extermination of a human group could not be called a dispute between the parties to the convention and therefore could not be within the province of the International Court of Justice. Moreover, the Court was not the competent body to consider situations endangering the maintenance of international peace and security, since it did not have the means to prevent acts of genocide.

a été commis sur le territoire d'un Etat; ce point fixé, l'Etat intéressé devra punir les coupables. La responsabilité internationale des Etats entraîne donc des conséquences pratiques.

Le représentant de la Bolivie estime que l'amendement commun de la Belgique et du Royaume-Uni constitue une amélioration sensible de l'article X. Par ailleurs, l'amendement proposé par la délégation d'Haïti semble incompatible avec l'Article 34 du Statut de la Cour.

C'est pourquoi la délégation bolivienne votera contre l'amendement d'Haïti.

M. FITZMAURICE (Royaume-Uni), répondant au représentant du Canada, déclare que la responsabilité envisagée dans l'amendement commun de la Belgique et du Royaume-Uni est la responsabilité internationale des Etats à la suite d'une violation de la convention. Il s'agit là d'une responsabilité civile et non pas d'une responsabilité pénale.

La séance est levée à 17 h. 55.

CENT-QUATRIEME SEANCE

Tenue au Palais de Chaillot, Paris, le samedi, 13 novembre 1948, à 10 h. 50.

Président: M. R. J. ALFARO (Panama).

53. Suite de l'examen du projet de convention sur le génocide [*E/794*]: rapport du Conseil économique et social [*A/633*]

NOMINATION D'UN COMITÉ DE RÉDACTION

Le PRÉSIDENT propose la nomination d'un comité de rédaction comprenant les Etats membres suivants: Belgique, Chine, Cuba, Egypte, France, Pologne, Union des Républiques socialistes soviétiques, Royaume-Uni, Etats-Unis d'Amérique.

Il en est ainsi décidé.

ARTICLE X (*suite*)

M. MOROZOV (Union des Républiques socialistes soviétiques) déclare que la délégation de l'URSS ne peut accepter l'amendement commun du Royaume-Uni et de la Belgique [*A/C.6/258*] parce que son adoption n'empêchera pas les actes de génocide ou les violations de la convention. Le but de l'amendement semble être d'empêcher un Etat de soumettre une plainte pour actes de génocide au Conseil de sécurité ou à l'Assemblée générale, empêchant ainsi l'Organisation des Nations Unies de prendre rapidement les mesures nécessaires. L'extermination en masse de collectivités humaines ne peut pas être considérée comme un différend entre les parties à la convention et ne peut donc être du ressort de la Cour internationale de Justice. Celle-ci, d'autre part, n'est pas compétente pour examiner les situations mettant en danger le maintien de la paix et de la sécurité internationale, car elle ne dispose pas des moyens nécessaires pour empêcher les actes de génocide.

La question qui est en discussion n'est pas la responsabilité pénale, mais la responsabilité civile, qui prévoit des réparations pour les actes de génocide. L'obligation de prévoir ces réparations ne peut découler que de la reconnaissance de

which had taken part in the crime, and not by the rulers of the State.

The proposed amendment of the United Kingdom and Belgium was only an attempt to submit, in another form, an amendment to article V in order to reintroduce the idea of the criminal responsibility of States for acts of genocide. That idea had been rejected by the Committee (93rd meeting). Mr. Morozov hoped that the Committee would again show its reluctance to include such a provision in the convention.

Mr. MESSINA (Dominican Republic) pointed out that when the Committee had discussed article V of the draft convention, the United Kingdom delegation had proposed [*A/C.6/236*] the addition of a paragraph providing that when crimes of genocide were committed by or on behalf of Governments, such acts should be considered a violation of the convention. He had opposed that amendment not only because it was contrary to the first part of article V, which had already been approved (95th meeting), but also because, according to the law of the Dominican Republic, a legal entity could not be considered guilty of a crime.

The joint amendment to article X submitted by the United Kingdom and Belgium provided that any dispute among contracting parties should be submitted to the International Court of Justice at the request of one of the parties.

That proposal appeared to reproduce the same views as were reflected in the United Kingdom addition to article V. The new joint amendment should not be included in the convention; even without its inclusion the International Court of Justice would be competent to deal with disputes among States and decide on violations or reparations. Since the States which would sign the convention were already parties to the Statute of the International Court of Justice, it would be sufficient for those which had not yet accepted the compulsory jurisdiction of the Court to accept it, in which case the jurisdiction of the Court would be even greater.

Mr. Messina concluded by stating that his delegation would not vote in favour of the joint amendment submitted by the United Kingdom and Belgium.

Mr. INGLES (Philippines) wished to reply to a direct allusion made at the 103rd meeting by the representative of the Netherlands. Article V had been amended by the Committee so as to exclude constitutional monarchs from its provisions, as some delegations had stated that their Governments would not be able to accept the convention if it included any provision making constitutional monarchs responsible for acts of genocide. He wondered whether the Committee, having recognized in the convention the constitutional fiction that "the king can do no wrong", was also going to accept the constitutional principle that "the State can do no wrong." Some delegations might not be willing to be parties to the convention if it contained a provision holding States responsible for acts of genocide. The principle of State immunity would certainly be more justified than the fiction of monarchical irresponsibility if the purpose of the Committee in drafting the convention was to punish the real authors of genocide.

l'infraction par l'Etat qui a commis le crime et non pas par les gouvernants de cet Etat.

L'amendement commun proposé par le Royaume-Uni et la Belgique n'est qu'une tentative pour soumettre, sous une autre forme, un amendement à l'article V et introduire l'idée de la responsabilité pénale des Etats dans les actes de génocide. Or, cette idée a été repoussée par la Commission (93ème séance). M. Morozov espère que la Commission montrera à nouveau qu'elle n'est pas disposée à insérer cette disposition dans la convention.

M. MESSINA (République Dominicaine) souligne que lorsque la Commission a discuté l'article V du projet de convention, la délégation du Royaume-Uni a proposé [*A/C.6/236*] d'ajouter un paragraphe disposant que, lorsque le crime de génocide était commis par un Gouvernement, ou en son nom, cet acte serait considéré comme une violation de la convention. Il s'est opposé à cet amendement, non seulement parce qu'il était contraire aux dispositions de la première partie de l'article V, déjà approuvée (95ème séance), mais aussi parce que, conformément aux lois de la République Dominicaine, une entité légale ne peut être considérée comme coupable d'un crime.

L'amendement commun à l'article X, présenté par le Royaume-Uni et la Belgique, stipule que tout différend entre les parties contractantes doit êtres soumis à la Cour internationale de Justice à la requête d'une des parties.

Cette proposition paraît contenir les idées même qui inspiraient l'additif à l'article V présenté par le Royaume-Uni. Le nouvel amendement commun ne doit pas être incorporé dans la convention; même sans cet amendement, la Cour internationale de Justice restera compétente pour examiner les différends entre Etats et statuer sur les violations et les réparations. Etant donné que les Etats qui signeront la convention ont également adhéré au Statut de la Cour internationale de Justice, il suffira aux Etats qui n'ont pas encore reconnu la juridiction obligatoire de la Cour de le faire, ce qui étendra la juridiction de la Cour.

M. Messina conclut en déclarant que sa délégation ne votera pas en faveur de l'amendement commun présenté par le Royaume-Uni et la Belgique.

M. INGLES (Philippines) désire répondre à une allusion directe faite, au cours la 103ème séance, par le représentant des Pays-Bas. L'article V a été modifié par la Commission afin que ses dispositions ne s'appliquent pas aux monarques constitutionnels, plusieurs délégations ayant déclaré que leur Gouvernement n'accepterait pas la convention si elle comportait une disposition rendant les monarques constitutionnels responsables des actes de génocide. Il se demande si la Commission, ayant admis dans la convention la fiction constitutionnelle suivant laquelle "le roi ne peut mal faire", va également accepter le principe constitutionnel suivant lequel "l'Etat ne peut mal faire". Certaines délégations ne seront sans doute pas disposées à être parties à la convention si celle-ci contient une disposition tenant les Etats responsables des actes de génocide. Le principe de l'immunité de l'Etat se justifie certainement plus que la fiction de l'irresponsabilité royale si le but de la Commission, en rédigeant la convention, est de punir les véritables auteurs des actes de génocide.

The Philippine delegation favoured the text of article X as drafted by the *Ad Hoc* Committee because it recognized the right of contracting parties to bring a dispute as to the interpretation or application of the convention before the International Court of Justice. It was, however, against the joint amendment of the United Kingdom and Belgium, which would extend the jurisdiction of the Court to disputes relating to the responsibility of States for acts of genocide. Article V excluded the criminal responsibility of States for acts of genocide, and Mr. Ingles recalled that the Committee had rejected (96th meeting) the United Kingdom amendment supporting the idea that genocide might be committed by or on behalf of a State.

The United Kingdom representative had implied at the 103rd meeting that his delegation had abandoned the concept of the criminal responsibility of States. It must be assumed, therefore, that the new joint amendment envisaged some sort of civil responsibility, the beneficiary of which was not specified. The fundamental purpose of the original text of article X was to provide for an agency for the settlement of disputes between States only with respect to the interpretation and application of the provisions of the convention. A breach of the convention by a signatory State would be an act of international delinquency but not a crime against international law.

Although private persons might be held primarily responsible, as individuals, for acts committed by the State, that did not necessarily mean that States should be held directly responsible for the acts of private individuals. As had been pointed out by the United Kingdom representative (64th meeting), when a State was provoked by acts of genocide committed against its nationals, the only remedy was to resort to war, and the stakes were therefore higher than the award of pecuniary damages.

For those reasons, the Philippine delegation had supported the punishment of individuals only, either by national or international criminal courts. An award of damages would not be an adequate substitute for the punishment of the individual criminal.

Mr. LACHS (Poland) said he was disturbed to notice how many delegations had shown readiness to accept the joint amendment. He had pointed out, at the 103rd meeting, the difficulty which would arise in the practical application of the suggested provision, which would not only not help but would constitute an obstacle to the prevention of genocide. Mr. Lachs disagreed with the reference made by the Netherlands representative (103rd meeting) to Article 33 of the Charter, inasmuch as that Article dealt with cases which might be settled by negotiation, mediation or other peaceful means.

In his statement at the 103rd meeting, the United Kingdom representative had explained what he meant by "responsibility of a State". Mr. Lachs pointed out that such responsibility implied the compensation due for a wrong committed, but that such questions should not be covered by a convention for the punishment of crimes. If genocide were committed, no restitution

La délégation des Philippines est en faveur du texte de l'article X, tel que l'a rédigé le Comité spécial, car ce texte reconnaît aux parties contractantes le droit de saisir la Cour internationale de Justice des différends qui pourraient surgir à propos de l'interprétation ou de l'application de la convention. La délégation des Philippines est, par contre, opposée à l'amendement commun du Royaume-Uni et de la Belgique, qui étendrait la juridiction de la Cour aux différends relatifs à la responsabilité des Etats pour les crimes de génocide. L'article V exclut la responsabilité pénale des Etats pour les actes de génocide, et M. Ingles rappelle que la Sixième Commission a rejeté (96ème séance) l'amendement du Royaume-Uni, qui prévoyait que le génocide pouvait être commis par un Etat ou pour son compte.

Le représentant du Royaume-Uni a laissé entendre, à la 103ème séance, que sa délégation renonçait à défendre l'idée de la responsabilité pénale des Etats. L'orateur suppose donc que le nouvel amendement commun envisage une sorte de responsabilité civile, sans préciser qui serait le bénéficiaire. Le texte primitif de l'article X prévoit essentiellement un organisme chargé de régler les différends qui pourraient surgir entre Etats, mais seulement à propos de l'interprétation et de l'application des dispositions de la convention. En violant la convention, un Etat signataire commettrait un délit international, mais non un crime du droit des gens.

Bien qu'il soit possible de tenir des particuliers pour responsables, à titre individuel, d'actes commis par l'Etat, il n'en découle pas nécessairement qu'il faut tenir les Etats pour directement responsables des actes commis par des particuliers. Comme l'a fait remarquer le représentant du Royaume-Uni (64ème séance), quand un Etat s'élève contre des actes de génocide commis contre ses ressortissants, il n'a d'autre ressource que la guerre; l'enjeu dépasse par conséquent l'octroi éventuel de dommages-intérêts.

C'est pour ces raisons que la délégation des Philippines s'est déclarée en faveur du châtiment des seuls individus, que ce châtiment soit infligé par des tribunaux criminels nationaux ou internationaux. L'octroi de dommages-intérêts en espèces ne saurait tenir lieu de châtiment de l'individu criminel.

M. LACHS (Pologne) est inquiet de voir tant de délégations disposées à accepter l'amendement commun. A la 103ème séance, il a signalé la difficulté que présenterait l'application pratique de la disposition envisagée, car celle-ci, non seulement ne serait d'aucune aide pour prévenir le génocide, mais pourrait même empêcher de le prévenir. M. Lachs n'approuve pas l'allusion que le représentant des Pays-Bas a faite (103ème séance) à l'Article 33 de la Charte, car cet Article ne traite que des cas susceptibles d'être réglés par la négociation, la méditation ou d'autres moyens pacifiques.

Dans sa déclaration à la 103ème séance, le représentant du Royaume-Uni a expliqué ce qu'il entendait par la "responsabilité des Etats". M. Lachs fait remarquer que cela implique la réparation des dommages causés; mais de telles questions ne devraient pas entrer dans le cadre d'une convention qui vise à châtier des crimes. Si le crime de génocide est commis, aucune restitution

or compensation would redress the wrong. The convention would be rendered valueless if it were couched in terms which might allow criminals who committed acts of genocide to escape punishment by paying compensation.

Mr. RAAFAT (Egypt) wished to reply to certain comments made on his statement at the 103rd meeting concerning the deletion of the last part of article X.

The Iranian representative had said that the last part of article X should be deleted; Mr. Raafat pointed out, however, that although no international criminal court existed as yet, it would be advisable not to preclude the possibility of establishing such a court at a later date. The Committee, therefore, should not adopt the Iranian proposal [*A/C.6/217*] for the deletion of the second part of article X.

Mr. Raafat requested that the joint amendment of Belgium and the United Kingdom should be divided into two parts and voted upon separately.

Mr. ABDOH (Iran), referring to the amendment submitted by the representative of Haiti (103rd meeting), said that in his opinion it was contrary to the terms of Article 34 of the Statute of the International Court of Justice.

Turning to the question of the joint amendment submitted by Belgium and the United Kingdom, Mr. Abdoh said that it would not preclude the possible intervention of other competent organs of the United Nations, such as the Security Council or the General Assembly. When a case of genocide arose which was a threat to international peace and security, Chapters VI and VII of the Charter might be applied. Article 36 of the Statute of the Court permitted the intervention of that body in the cases referred to in the joint amendment.

The Iranian representative felt that the amendment did not clearly determine the civil responsibility of States with regard to the crime of genocide; he would therefore appreciate a clarification by the United Kingdom representative on various points.

When answering a question by the representative of Canada, the United Kingdom representative had said (103rd meeting) that he envisaged civil responsibility in his amendment. In international law, a State asked for reparation of damages inflicted on its nationals by another State; but in the case of genocide, it was a question of injuries inflicted on citizens by citizens of the same State. Mr. Abdoh wondered how the civil responsibility of the State would arise. Reparations could be paid to a State when its citizens had been the victims of an act of genocide in another State, but in some of the cases envisaged in the convention, it was difficult to determine which State would have the right to damages.

The representative of Iran would also like to have the views of the representative of the United Kingdom on the nature of the damages, if a State were not directly but indirectly concerned, merely as signatory to the convention. If each State party to the convention were entitled to reparations, such a provision would obviously lead to abuse.

ni aucune compensation ne saurait réparer le dommage causé. La convention serait sans valeur, si elle était rédigée dans des termes qui permettraient aux criminels coupables d'actes de génocide de se soustraire au châtiment en payant des dommages-intérêts.

M. RAAFAT (Egypte) tient à répondre à certains commentaires sur la déclaration qu'il a faite à la 103ème séance en ce qui concerne la suppression de la dernière partie de l'article X.

Le représentant de l'Iran a dit que la dernière partie de l'article X doit être supprimée; mais M. Raafat fait observer que, bien qu'il n'existe pas encore de tribunal pénal international, il serait bon de ne pas exclure la possibilité d'en créer un ultérieurement. La Commission ne devrait donc pas adopter la proposition de l'Iran [*A/C.6/217*] tendant à la suppression de la deuxième partie de l'article X.

M. Raafat demande que l'amendement commun de la Belgique et du Royaume-Uni soit divisé en deux parties qui seront mises aux voix séparément.

M. ABDOH (Iran) déclare que l'amendement du représentant d'Haïti (103ème séance) est, à son avis, incompatible avec les dispositions de l'Article 34 du Statut de la Cour internationale de Justice.

Passant à l'amendement commun de la Belgique et du Royaume-Uni, M. Abdoh fait observer qu'il n'exclurait pas l'intervention éventuelle d'autres organismes compétents des Nations Unies, tels que le Conseil de sécurité ou l'Assemblée générale. S'il se produisait un cas de génocide qui constituât une menace à la paix et à la sécurité internationales, on pourrait avoir recours aux Chapitres VI et VII de la Charte. Aux termes de l'Article 36 de son Statut, la Cour internationale de Justice est autorisée à s'occuper des cas mentionnés dans l'amendement commun.

Le représentant de l'Iran estime que l'amendement ne définit pas clairement la responsabilité civile des Etats en matière de génocide; il serait donc reconnaissant au représentant du Royaume-Uni de bien vouloir préciser un certain nombre de points.

En réponse à une question du représentant du Canada, le représentant du Royaume-Uni a déclaré (103ème séance) que la responsabilité civile était prévue dans son amendement. En droit international, un Etat demande réparation pour des dommages causés à ses ressortissants par un autre Etat, mais, dans le cas du génocide, il s'agit de dommages causés à des citoyens d'un Etat par d'autres citoyens du même Etat; M. Abdoh se demande donc comment la responsabilité civile de l'Etat sera établie. Un Etat peut recevoir réparation lorsque ses nationaux ont été victimes d'un acte de génocide commis dans un autre Etat; toutefois, dans certains cas envisagés dans la convention actuelle, M. Abdoh ne peut parvenir à déterminer quel Etat aura droit à une réparation.

Le représentant de l'Iran voudrait également connaître l'opinion du représentant du Royaume-Uni sur la nature des réparations dans le cas d'un Etat qui serait intéressé, non pas directement, mais indirectement, en tant que signataire de la convention. Si chaque Etat partie à la convention a droit à des réparations, il en ré-

The International Court of Justice could not inflict fines and, furthermore, Mr. Abdoh wished to know what would be the juridical basis for receiving such moneys.

Mr. FITZMAURICE (United Kingdom) expressed surprise that certain delegations had argued that provision to refer acts of genocide to the International Court of Justice might be a hindrance to the punishment of the crime.

In reply to statements made by the representatives of the USSR and Poland (103rd meeting), he stated that reference to the International Court could not prevent the submission of a case of genocide to the Security Council if it threatened international peace and security. The reference of disputes as to the responsibility of States under the convention, or as to the interpretation of the convention, could not in any way affect the submission of cases to any of the competent organs of the United Nations.

With regard to the questions put to him by the representative of Iran, Mr. Fitzmaurice wished to point out that he did not contemplate that a case of cash reparations would arise. The cases of reparation mentioned by the Iranian representative did not occur in acts of genocide, because the offences were generally committed by the State against its own nationals.

An argument which had been put forward in the Committee was that to refer cases to the International Court of Justice would be useless because any action on its part would be taken too late and would not repair injuries already committed. The United Kingdom representative did not think that acts of genocide occurred suddenly; genocide was a process in which racial, religious or political groups were gradually destroyed. When it became clear that genocide was being committed, any party to the convention could refer the matter to the International Court of Justice. Should the Court decide that a breach of the convention had been committed, it could order punishment. In accordance with Article 94 of the Charter, Member States were legally bound to comply with the decisions of the International Court. Furthermore, Article 94, paragraph 2 of the Charter provided that if a State failed to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party might have recourse to the Security Council.

The United Kingdom delegation had always taken into account the enormous practical difficulties of bringing rulers and heads of States to justice, except perhaps at the end of a war. In time of peace it was virtually impossible to exercise any effective international or national jurisdiction over rulers or heads of States. For that reason, the United Kingdom delegation had felt that provision to refer acts of genocide to the International Court of Justice, and the inclusion of the idea of international responsibility of States or Governments, was necessary for the establishment of an effective convention on genocide.

Mr. Fitzmaurice accepted the amendment submitted by the representative of India (103rd meeting).

sultera naturellement des abus. La Cour internationale de Justice ne peut pas infliger d'amendes; de plus, M. Abdoh voudrait savoir sur quel principe de droit on se baserait pour percevoir ces amendes en espèces.

M. FITZMAURICE (Royaume-Uni) est surpris que certaines délégations prétendent que le fait de saisir la Cour internationale de Justice d'actes de génocide risquerait de faire obstacle à la répression de ce crime.

En réponse aux déclarations des représentants de l'URSS et de la Pologne (103ème séance), M. Fitzmaurice déclare que le fait de soumettre à la Cour internationale de Justice une affaire de génocide ne saurait empêcher que le Conseil de sécurité n'en soit également saisi au cas où la paix et la sécurité internationales se trouveraient menacées. Le fait de soumettre à la Cour les différends relatifs à la responsabilité des Etats aux termes de la convention, ou à l'interprétation de la convention, ne saurait empêcher le renvoi des cas de génocide devant l'un des organes compétents des Nations Unies.

En réponse aux questions posées par le représentant de l'Iran, M. Fitzmaurice tient à préciser qu'il n'envisage pas des réparations en espèces. Les cas de réparation auxquels le représentant de l'Iran a fait allusion ne peuvent se présenter lorsqu'il s'agit du génocide, étant donné que, en général, les crimes sont commis par l'Etat contre ses propres nationaux.

On a souvent prétendu à la Commission qu'il serait inutile de soumettre les cas de génocide à la Cour internationale de Justice, car celle-ci agirait trop tard et ne pourrait réparer les torts déjà causés. Le représentant du Royaume-Uni ne pense pas que les actes de génocide se produisent subitement: le génocide est la destruction progressive de groupes raciaux, religieux ou politiques. S'il se précise qu'un génocide est en voie de perpétration, toute partie à la convention peut en saisir la Cour internationale de Justice. Si celle-ci décide qu'une violation de la convention a été commise, elle pourra infliger une peine. Conformément à l'Article 94 de la Charte, les Etats Membres sont légalement tenus de se conformer aux décisions de la Cour internationale. En outre, le paragraphe 2 de cet Article 94 prévoit que si un Etat ne satisfait pas aux obligations qui lui incombent en vertu d'un arrêt rendu par la Cour, l'autre partie peut recourir au Conseil de sécurité.

La délégation du Royaume-Uni a toujours tenu compte du fait que, du point de vue pratique, il est extrêmement difficile de traduire en justice des gouvernants et des chefs d'Etat, sauf peut-être à la suite d'une guerre. En temps de paix, il est pratiquement impossible d'exercer une juridiction internationale ou nationale efficace sur des gouvernants ou des chefs d'Etat. C'est pourquoi la délégation du Royaume-Uni a considéré qu'il était indispensable, pour établir une convention efficace sur le génocide, de prévoir que les actes de génocide seront soumis à la Cour internationale de Justice, et d'introduire la notion de la responsabilité internationale des Etats ou des gouvernements.

M. Fitzmaurice accepte l'amendement soumis par le représentant de l'Inde (103ème séance).

Mr. SPIROPOULOS (Greece) remarked that the Committee's confusion on the article under discussion was due in the first place to the sentence in the joint amendment referring to the responsibility of States for acts covered by article II and IV of the convention; and in the second place to the statement made by the representative of France (103rd meeting) which, for the first time, introduced a reference to the civil responsibility of States. Article X embodied provisions which were not new and could be found in almost any other convention established after the First World War.

As a general rule, the State was responsible for acts of genocide committed in its territory and that provision was covered by article I of the convention. If the crime were committed by private individuals, the State was not responsible unless it failed to take measures to punish the persons responsible. If public officials or rulers committed the crime, the State could not be held to be criminally responsible; it was responsible in cases of violation of international obligations.

Genocide could be committed against the nationals of the State itself, or against aliens. If a State ordered the destruction of a minority group which included aliens, the convention was superfluous, because the principles of international law would in any case have been violated. The nationals of the State itself needed protection, not the aliens. The signatory States undertook only to prevent and punish the crime of genocide and would not assume any obligation as to the nature or extent of the reparations to be made.

Mr. DEMESMIN (Haiti), replying to the arguments advanced by several representatives, to the effect that his amendment was contrary to the provisions of Article 34 of the Statute of the International Court of Justice, which proclaimed that only States could be parties in cases before the Court, cited Article 13 b of the United Nations Charter which mentioned the General Assembly's responsibility for assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. That was surely a more vital obligation than the one contained in Article 34 of the Statute of the International Court of Justice, especially as Article 103 of the Charter stated that obligations under the Charter should prevail over any other obligations. The victims of the crime of genocide were the persons most likely to wish to bring the matter before the Court and they should be given the opportunity to do so.

The joint amendment submitted by the delegations of Belgium and the United Kingdom brought up the question of the responsibility of the State. The concept of the criminal responsibility of the State had already been rejected and without criminal responsibility there could be no civil responsibility. It had also been decided (100th meeting) that cases of genocide would be tried by national tribunals and no provision for establishing an international tribunal had been included in the convention. In those circumstances, the joint amendment was extremely weak and would not be very effective.

M. SPIROPOULOS (Grèce) fait remarquer que le caractère confus de la discussion sur l'article soumis à la Commission est dû, en premier lieu, à la phrase de l'amendement commun qui mentionne la responsabilité des Etats pour des actes visés aux articles II et IV de la convention; et en deuxième lieu, à la déclaration du représentant de la France (103ème séance) qui, pour la première fois, introduit la mention de la responsabilité civile des Etats. L'article X contient des dispositions qui ne sont pas nouvelles et que l'on peut retrouver dans presque toutes les conventions établies après la première guerre mondiale.

En règle générale, l'Etat est responsable des actes de génocide commis sur son territoire; cette disposition figure à l'article premier de la convention. Si le crime est commis par des individus, l'Etat n'est pas responsable, à moins qu'il ne prenne pas de mesures en vue de punir les personnes responsables. Si des représentants de l'Etat, ou des dirigeants, commettent le crime, l'Etat ne peut être tenu criminellement responsable; il est responsable dans les cas de violation d'obligations internationales.

Le génocide peut être commis contre les nationaux de l'Etat lui-même ou contre des étrangers. Si un Etat ordonne la destruction d'un groupe minoritaire comprenant des étrangers, la convention est inutile, puisque les principes du droit international auront de toute façon été violés. Les nationaux de l'Etat ont besoin de protection, non les étrangers. Les Etats signataires entreprennent seulement d'interdire et de punir le crime de génocide et n'assument pas d'obligations quant à la nature ou à l'importance des réparations.

M. DEMESMIN (Haïti) constate que plusieurs représentants estiment son amendement contraire aux dispositions de l'Article 34 du Statut de la Cour internationale de Justice: aux termes de cet Article, seuls les Etats ont qualité pour se présenter devant la Cour. En réponse à cet argument, il cite le paragraphe b de l'Article 13 de la Charte des Nations Unies, qui dit que l'Assemblée générale doit faciliter pour tous, sans distinction de race, de sexe, de langue ou de religion, la jouissance des droits de l'homme et des libertés fondamentales. Cette obligation est certainement plus essentielle que celle qui est contenue dans l'Article 34 du Statut de la Cour internationale de Justice, étant donné surtout que l'Article 103 de la Charte déclare que les obligations en vertu de la Charte doivent prévaloir sur toute autre obligation. Il est tout à fait vraisemblable que ce seront surtout les victimes du crime de génocide qui voudront porter la question devant la Cour et il faut leur donner la possibilité de le faire.

L'amendement commun soumis par les délégations de la Belgique et du Royaume-Uni pose le problème de la responsabilité de l'Etat. La notion de la responsabilité criminelle de l'Etat a déjà été repoussée et sans responsabilité criminelle, il ne peut y avoir de responsabilité civile. Il a également été décidé (100ème séance) que les cas de génocide seront jugés par des tribunaux nationaux et la convention ne renferme aucune clause tendant à la création d'un tribunal international. Dans ces conditions, l'amendement commun est de faible portée et ne sera guère efficace.

In order to facilitate agreement, however, the representative of Haiti withdrew his amendment.

Mr. PRATT DE MARÍA (Uruguay), supported by Mr. RAAFAT (Egypt), requested that the joint amendment should be put to the vote in parts and that the phrase "including disputes relating to the responsibility of a State for any of the acts enumerated in articles II and IV" should be put to the vote separately.

In reply to a question by the representative of EL SALVADOR, the CHAIRMAN explained that the vote on the joint United Kingdom and Belgian amendment would not affect the issue as to the last part of article X as drafted by the *Ad Hoc* Committee. The original Belgian amendment [*A/C.6/217*] for the deletion of the last part of the article had been re-submitted by the representative of Iran (103rd meeting) and would be put to the vote afterwards whatever the result of the vote on the joint amendment.

Mr. CHAUMONT (France) suggested dividing the amendment into three parts for the purposes of the vote. The first vote would be taken on the question of inserting the word "fulfilment"; the second on the phrase "including disputes relating to the responsibility of a State for any of the acts enumerated in articles II and IV", and the third vote on the rest of the amendment would at the same time settle the question as to the deletion or retention of the last part of article X as drafted by the *Ad Hoc* Committee.

Mr. MOROZOV (Union of Soviet Socialist Republics) did not agree to that method of voting. The first part of the joint amendment was exactly the same as the first part of the original draft except for the addition of the word "fulfilment". That part could not, therefore, be considered as an amendment and the only point that should be put to the vote was the question of adding the word "fulfilment" to the first part of the basic text. The second vote should be taken on the part of the joint amendment starting with the words "including disputes". If any other procedure were followed, the Committee would be departing from its decision to take the *Ad Hoc* Committee's draft as its basic text.

Mr. MOROZOV reminded the Chairman that the Iranian amendment calling for the deletion of the whole of article X had not yet been discussed.

The CHAIRMAN replied that amendments could not be divided for the purpose of comparing parts of them with parts of the original text. The joint amendment as a whole differed substantially from the basic text and it was only being divided for the purpose of the vote.

In order to meet the point raised by the representative of the Soviet Union he ruled that a separate vote would be taken on the question of adding the word "fulfilment". The rest of the joint amendment would then be put to the vote in parts, as requested by the representatives of Uruguay and Egypt.

Mr. MOROZOV (Union of Soviet Socialist Republics) appealed against the Chairman's ruling.

The CHAIRMAN put the appeal to the vote.

Toutefois, en vue de faciliter un accord, le représentant de Haïti retire son amendement.

M. PRATT DE MARÍA (Uruguay), soutenu par M. RAAFAT (Egypte), demande que l'amendement commun soit mis aux voix en plusieurs parties et que l'expression "y compris les différends relatifs à la responsabilité d'un Etat dans les actes énumérés aux articles II et IV" soit mise aux voix séparément.

En réponse à une question du représentant du SALVADOR, le PRÉSIDENT explique que le vote sur l'amendement commun du Royaume-Uni et de la Belgique ne modifiera en rien la question relative à la dernière partie du texte de l'article X rédigé par le Comité spécial. L'amendement initial de la Belgique [*A/C.6/217*], visant à la suppression de la dernière partie de cet article, a été soumis à nouveau par le représentant de l'Iran et sera mis aux voix par la suite, quel que soit le résultat du vote sur l'amendement commun.

M. CHAUMONT (France) propose la division de l'amendement en trois parties pour les besoins du vote. Le premier vote aurait lieu sur l'insertion du mot "exécution", le deuxième sur l'expression "y compris les différends relatifs à la responsabilité d'un Etat dans les actes énumérés aux articles II et IV"; le troisième vote sur le reste de l'amendement réglerait du même coup la question de savoir s'il y a lieu de retenir ou de supprimer la dernière partie du texte de l'article X rédigé par le Comité spécial.

M. MOROZOV (Union des Républiques socialistes soviétiques) n'approuve pas cette façon de voter. La première partie de l'amendement commun est exactement la même que la première partie du projet original, l'adjonction du mot "exécution" mise à part. En conséquence, cette partie ne peut être considérée comme un amendement et la seule proposition qui doive être mise aux voix est l'adjonction du mot "exécution" à la première partie du texte de base. Un deuxième vote devra porter sur la partie de l'amendement commun qui débute par ces termes: "y compris les différends". Si la Commission adoptait toute autre méthode, elle ne respecterait pas sa décision de prendre le projet présenté par le Comité spécial comme texte de base.

M. Morozov rappelle au Président que l'amendement de l'Iran visant à la suppression de l'ensemble de l'article X n'a pas encore été discuté.

Le PRÉSIDENT répond que les amendements ne peuvent être séparés dans le but de comparer leurs diverses parties avec les parties du texte original. L'amendement commun pris dans son ensemble est très différent du texte de base et ce n'est que pour le vote qu'il est séparé en plusieurs parties.

Pour donner satisfaction au représentant de l'Union soviétique, le Président décide de faire procéder à un vote séparé sur l'adjonction du mot "exécution". Le reste de l'amendement commun sera ensuite mis aux voix en plusieurs parties, comme l'ont demandé les représentants de l'Uruguay et de l'Egypte.

M. MOROZOV (Union des Républiques socialistes soviétiques) fait appel de la décision du Président.

Le PRÉSIDENT met cet appel aux voix.

The Chairman's ruling was upheld by 28 votes to 5, with 10 abstentions.

Replying to a question by the representative of CUBA, the CHAIRMAN said that the fact of putting the joint amendment to the vote in parts did not affect his earlier ruling (103rd meeting) concerning the Iranian amendment calling for the deletion of the second part of article X as drafted by the *Ad Hoc* Committee. That amendment would be put to the vote in due course.

He put to the vote the amendment submitted by the representative of India (103rd meeting) to the joint amendment of the United Kingdom and Belgium [*A/C.6/258*].

The Indian amendment was adopted by 30 votes to 9, with 8 abstentions.

The CHAIRMAN put to the vote the deletion of the word "fulfilment" from the joint amendment of the United Kingdom and Belgium.

The deletion was rejected by 27 votes to 10, with 8 abstentions.

The CHAIRMAN put to the vote the deletion of the words "including disputes relating to the responsibility of a State for any of the acts enumerated in articles II and IV" from the joint amendment of the United Kingdom and Belgium.

The deletion was rejected by 19 votes to 17, with 9 abstentions.

The CHAIRMAN put to the vote the joint amendment of the United Kingdom and Belgium as a whole, as amended by India.

The amendment was adopted by 23 votes to 13, with 8 abstentions.

Mr. TSIEN (China) explained that he had abstained from voting because, although he approved of the idea of submitting disputes to the International Court of Justice, he did not think that the concept of the responsibility of the State should be included in the convention.

The CHAIRMAN put the Iranian amendment [*A/C.6/217*] before the Committee.

Mr. DEMESMIN (Haiti) said that, since the joint amendment had been proposed in substitution for article X as drafted by the *Ad Hoc* Committee, it would not be in order to put any further amendments to the vote. In his opinion, the Committee had adopted the final text of article X in adopting the joint amendment as a whole, and the Iranian amendment could no longer be considered.

Mr. CHAUMONT (France) did not agree with that interpretation of the vote. He had voted in favour of the joint amendment only on the understanding that a further vote would be taken concerning the last part of article X.

Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) said that it had been made quite clear before the vote that the result of that vote would not prevent the Committee from taking a further decision concerning the last part of article X. The adoption of the joint amendment naturally meant that the Iranian amendment could not be discussed in the form of a deletion, but it would be perfectly in order to discuss the question if some representative were to propose the wording of the last part of article X as an addition to the adopted text.

Par 28 voix contre 5, avec 10 abstentions, la décision du Président est maintenue.

En réponse à une question posée par le représentant de CUBA, le PRÉSIDENT déclare que le fait de mettre l'amendement commun aux voix en plusieurs parties ne modifie pas sa décision précédente (103ème séance) au sujet de l'amendement de l'Iran tendant à supprimer la deuxième partie du texte de l'article X rédigé par le Comité spécial. Cet amendement sera mis aux voix le moment venu.

Il met aux voix l'amendement, soumis par le représentant de l'Inde (103ème séance), à l'amendement commun du Royaume-Uni et de la Belgique [*A/C.6/258*].

Par 30 voix contre 9, avec 8 abstentions, l'amendement de l'Inde est adopté.

Le PRÉSIDENT met aux voix la suppression du mot "exécution" dans l'amendement commun du Royaume-Uni et de la Belgique.

Par 27 voix contre 10, avec 8 abstentions, la suppression est rejetée.

Le PRÉSIDENT met aux voix la suppression des mots "y compris les différends relatifs à la responsabilité d'un Etat dans les actes énumérés aux articles II et IV" dans l'amendement commun du Royaume-Uni et de la Belgique.

Par 19 voix contre 17, avec 9 abstentions, la suppression est rejetée.

Le PRÉSIDENT met aux voix l'amendement commun du Royaume-Uni et de la Belgique, amendé par l'Inde.

Par 23 voix contre 13, avec 8 abstentions, l'amendement est adopté.

M. TSIEN (Chine) explique qu'il s'est abstenu de voter parce que, tout en approuvant l'idée de soumettre les différends à la Cour internationale de Justice, il ne pense pas que la notion de la responsabilité d'un Etat doive figurer dans la convention.

Le PRÉSIDENT soumet à l'examen de la Commission l'amendement de l'Iran [*A/C.6/217*].

M. DEMESMIN (Haïti) déclare que, puisque l'amendement commun a été proposé pour remplacer le texte de l'article X rédigé par le Comité spécial, il ne serait pas pertinent de mettre aux voix de nouveaux amendements. A son avis, la Commission a adopté le texte définitif de l'article X en adoptant l'amendement commun dans son ensemble et l'amendement de l'Iran ne peut plus être examiné.

M. CHAUMONT (France) n'approuve pas cette interprétation du vote. Il a voté en faveur de l'amendement commun, uniquement à la condition expresse qu'un nouveau vote aurait lieu en ce qui concerne la dernière partie de l'article X.

M. KERNO (Secrétaire général adjoint chargé du Département juridique) déclare que l'on a bien précisé, avant le vote, que le résultat du vote n'empêcherait pas la Commission de prendre une décision ultérieure au sujet de la dernière partie de l'article X. L'adoption de l'amendement commun signifie naturellement que l'on ne peut discuter l'amendement de l'Iran dans la mesure où il s'agirait de faire des suppressions, mais il serait parfaitement pertinent de discuter la question si un représentant proposait d'ajouter au texte adopté la dernière partie de l'article X.

The CHAIRMAN endorsed the explanation given by the Assistant Secretary-General.

Mr. DEMESMIN (Haiti), supported by Mr. IKSEL (Turkey), maintained the view that no further amendments should be discussed since the joint amendment had been adopted in substitution for article X.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that the rules of procedure had been systematically violated in the course of the voting in the Sixth Committee. When article VIII had been under discussion, the proposals for the deletion of that article had been put to the vote first, but that procedure had been abandoned in connexion with article X. He had challenged the Chairman's ruling earlier in the meeting because he had foreseen that it would lead to confusion if the Committee were to consider part of the basic text as an amendment.

He had voted against the joint amendment, but, since it had been adopted in substitution for the original text, there was nothing more to be done and no further amendments could be considered. The only way to rectify the matter would be to decide by a two-thirds majority to reverse the decision that had been taken and to recommence the voting in accordance with the rules of procedure.

The CHAIRMAN said that he had always acted in accordance with the will of the Committee. In order to avoid lengthy debates, whenever a question of procedure had arisen he had made a ruling immediately, so as to enable representatives to challenge that ruling if they so desired. Whenever his ruling had been challenged it had always been upheld by the vote of a large majority of the Committee. The questions of procedure had thus always been settled in accordance with the will of the Committee itself.

Mr. SPIROPOULOS (Greece), Rapporteur, said that the Committee had often had to deal with difficult texts giving rise to complicated questions of procedure and much time had been taken up in dealing with those points. In his opinion, the Chairman had followed the best possible course in dealing with questions of procedure.

The meeting rose at 1.00 p.m.

HUNDRED AND FIFTH MEETING

Held at the Palais de Chaillot, Paris, on Saturday, 13 November 1948, at 3.25 p.m.

Chairman: Prince Wan WAITHAYAKON (Siam).

54. Continuation of the consideration of the draft convention on genocide [*E/794*]: report of the Economic and Social Council [*A/633*]

COMPOSITION OF THE DRAFTING COMMITTEE

The CHAIRMAN proposed that the membership of the Drafting Committee should be increased from nine to eleven, and appointed the representatives of Australia and Brazil as members thereof.

Le PRÉSIDENT souscrit à l'explication donnée par le Secrétaire général adjoint.

M. DEMESMIN (Haïti) et M. IKSEL (Turquie) sont d'avis qu'il ne sied pas d'examiner de nouveaux amendements puisque l'amendement commun a été voté en remplacement de l'article X.

M. MOROZOV (Union des Républiques socialistes soviétiques) estime que l'on a transgressé continuellement le règlement intérieur au cours des votes de la Sixième Commission. Lors de l'examen de l'article VIII, on a d'abord mis aux voix les propositions tendant à la suppression de cet article, mais l'on a abandonné cette procédure pour l'article X. M. Morozov a fait appel de la décision que le Président a prise plus tôt au cours de la séance, parce qu'il prévoyait la confusion qu'entraînerait l'examen, par la Commission, d'une partie du texte de base, reprise sous forme d'amendement.

Il a voté contre l'amendement commun, mais, du moment qu'il a été adopté en remplacement du texte primitif, on ne peut rien faire d'autre ni engager de débats sur de nouveaux amendements. La seule possibilité de rectification consisterait à revenir, par un vote à la majorité des deux tiers, sur la décision prise et à reprendre les votes successifs, conformément au règlement intérieur.

Le PRÉSIDENT dit qu'il s'est toujours conformé à la volonté de la Commission. Pour éviter des débats prolongés, il a pris une décision immédiate chaque fois qu'une question de procédure s'est posée, de façon à permettre aux représentants d'en appeler à la Commission s'ils contestaient cette décision. Chaque fois que l'on a fait appel de ces décisions, elles ont toujours été maintenues à une forte majorité. Ainsi, les questions de procédure ont été résolues par la Commission elle-même, selon sa volonté.

M. SPIROPOULOS (Grèce), Rapporteur, déclare que la Commission a travaillé sur des textes difficiles, qui ont soulevé des questions de procédure compliquées; il a fallu beaucoup de temps pour régler ces questions. Il est d'avis que le Président a toujours choisi la meilleure solution pour résoudre les questions de procédure.

La séance est levée à 13 heures.

CENT-CINQUIEME SEANCE

Tenue au Palais de Chaillot, Paris, le samedi 13 novembre 1948, à 15 h. 25.

Président: Le prince Wan WAITHAYAKON (Siam).

54. Suite de l'examen du projet de convention sur le génocide [*E/794*]: rapport du Conseil économique et social [*A/633*]

COMPOSITION DU COMITÉ DE RÉDACTION

Le PRÉSIDENT propose de porter de neuf à onze le nombre des membres du Comité de rédaction et désigne pour en faire partie les représentants de l'Australie et du Brésil.

Annex 53

UNGA, Sixth Committee, Hundred and Fifth Meeting, Continuation of the consideration of the draft convention on genocide [E/794]: report to the Economic and Social Council [A/633] (13 November 1948), UN doc. A/C.6/SR.105 [extract]

Available at:

http://undocs.org/A/C.6/SR.105

The CHAIRMAN endorsed the explanation given by the Assistant Secretary-General.

Mr. DEMESMIN (Haiti), supported by Mr. IKSEL (Turkey), maintained the view that no further amendments should be discussed since the joint amendment had been adopted in substitution for article X.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that the rules of procedure had been systematically violated in the course of the voting in the Sixth Committee. When article VIII had been under discussion, the proposals for the deletion of that article had been put to the vote first, but that procedure had been abandoned in connexion with article X. He had challenged the Chairman's ruling earlier in the meeting because he had foreseen that it would lead to confusion if the Committee were to consider part of the basic text as an amendment.

He had voted against the joint amendment, but, since it had been adopted in substitution for the original text, there was nothing more to be done and no further amendments could be considered. The only way to rectify the matter would be to decide by a two-thirds majority to reverse the decision that had been taken and to recommence the voting in accordance with the rules of procedure.

The CHAIRMAN said that he had always acted in accordance with the will of the Committee. In order to avoid lengthy debates, whenever a question of procedure had arisen he had made a ruling immediately, so as to enable representatives to challenge that ruling if they so desired. Whenever his ruling had been challenged it had always been upheld by the vote of a large majority of the Committee. The questions of procedure had thus always been settled in accordance with the will of the Committee itself.

Mr. SPIROPOULOS (Greece), Rapporteur, said that the Committee had often had to deal with difficult texts giving rise to complicated questions of procedure and much time had been taken up in dealing with those points. In his opinion, the Chairman had followed the best possible course in dealing with questions of procedure.

The meeting rose at 1.00 p.m.

HUNDRED AND FIFTH MEETING

Held at the Palais de Chaillot, Paris, on Saturday, 13 November 1948, at 3.25 p.m.

Chairman: Prince Wan WAITHAYAKON (Siam).

54. Continuation of the consideration of the draft convention on genocide [*E/794*]: report of the Economic and Social Council [*A/633*]

COMPOSITION OF THE DRAFTING COMMITTEE

The CHAIRMAN proposed that the membership of the Drafting Committee should be increased from nine to eleven, and appointed the representatives of Australia and Brazil as members thereof.

Le PRÉSIDENT souscrit à l'explication donnée par le Secrétaire général adjoint.

M. DEMESMIN (Haïti) et M. IKSEL (Turquie) sont d'avis qu'il ne sied pas d'examiner de nouveaux amendements puisque l'amendement commun a été voté en remplacement de l'article X.

M. MOROZOV (Union des Républiques socialistes soviétiques) estime que l'on a transgressé continuellement le règlement intérieur au cours des votes de la Sixième Commission. Lors de l'examen de l'article VIII, on a d'abord mis aux voix les propositions tendant à la suppression de cet article, mais l'on a abandonné cette procédure pour l'article X. M. Morozov a fait appel de la décision que le Président a prise plus tôt au cours de la séance, parce qu'il prévoyait la confusion qu'entraînerait l'examen, par la Commission, d'une partie du texte de base, reprise sous forme d'amendement.

Il a voté contre l'amendement commun, mais, du moment qu'il a été adopté en remplacement du texte primitif, on ne peut rien faire d'autre ni engager de débats sur de nouveaux amendements. La seule possibilité de rectification consisterait à revenir, par un vote à la majorité des deux tiers, sur la décision prise et à reprendre les votes successifs, conformément au règlement intérieur.

Le PRÉSIDENT dit qu'il s'est toujours conformé à la volonté de la Commission. Pour éviter des débats prolongés, il a pris une décision immédiate chaque fois qu'une question de procédure s'est posée, de façon à permettre aux représentants d'en appeler à la Commission s'ils contestaient cette décision. Chaque fois que l'on a fait appel de ces décisions, elles ont toujours été maintenues à une forte majorité. Ainsi, les questions de procédure ont été résolues par la Commission elle-même, selon sa volonté.

M. SPIROPOULOS (Grèce), Rapporteur, déclare que la Commission a travaillé sur des textes difficiles, qui ont soulevé des questions de procédure compliquées; il a fallu beaucoup de temps pour régler ces questions. Il est d'avis que le Président a toujours choisi la meilleure solution pour résoudre les questions de procédure.

La séance est levée à 13 heures.

CENT-CINQUIEME SEANCE

Tenue au Palais de Chaillot, Paris, le samedi 13 novembre 1948, à 15 h. 25.

Président: Le prince Wan WAITHAYAKON (Siam).

54. Suite de l'examen du projet de convention sur le génocide [*E/794*]: rapport du Conseil économique et social [*A/633*]

COMPOSITION DU COMITÉ DE RÉDACTION

Le PRÉSIDENT propose de porter de neuf à onze le nombre des membres du Comité de rédaction et désigne pour en faire partie les représentants de l'Australie et du Brésil.

genocide could also be amended to cover the same points.

The representative of Iran held that the Committee should concern itself primarily with the task of bringing the various articles of the draft convention into line with each other.

Mr. ALEMAN (Panama) moved the closure of the debate in pursuance of rule 106 of the rules of procedure, as the Committee had been enlightened on the scope of the amendment.

Mr. MOROZOV (Union of Soviet Socialist Republics), speaking on a point of order, drew the Committee's attention to the fact that consideration of the second part of article X could not be allowed as it was out of order. When the Committee, in dealing with article VII, had taken a decision concerning an international criminal tribunal, it had prejudged the fate of all provisions relating to that tribunal. Since the jurisdiction of an international criminal tribunal had not been agreed to, there could be no question of any reference to it in another article of the convention.

The second part of article X should therefore not be discussed.

Mr. MAKTOS (United States of America), on the same point of order, agreed with the USSR representative; he did not think that the Iranian amendment should be put to a vote.

The CHAIRMAN ruled that the Iranian amendment had to be voted on since, by its earlier vote, the Committee had reached a decision to that effect.

He put the motion for closure to the vote.

The motion for closure was adopted by 21 votes to 1, with 8 abstentions.

The CHAIRMAN put to the vote the Iranian amendment [*A/C.6/217*] calling for the deletion of the second part of article X.

The amendment was adopted by 22 votes to 8, with 6 abstentions.

The CHAIRMAN opened the discussion on the Australian amendment [*A/C.6/265*], which provided for the addition of a second paragraph to article X, reading as follows:

"With respect to the prevention and suppression of acts of genocide, a Party to this Convention may call upon any competent organ of the United Nations to take such action as may be appropriate under the Charter of the United Nations."

Mr. TARAZI (Syria) thought the amendment was not in order, in view of the Committee's decision on article VIII relating to action by United Nations organs, and on the amendments to that article (101st meeting). The Australian amendment reintroduced the principle of article VIII. It could not therefore be considered unless the Committee decided to do so by a two-thirds majority, in accordance with rule 112 of the rules of procedure.

The CHAIRMAN agreed with the Syrian representative; the Australian amendment would not be discussed unless, by a two-thirds majority, the Committee decided otherwise.

différentes juridictions; en outre, la convention sur le génocide pourra être amendée dans le même sens.

Le représentant de l'Iran estime que, à l'heure actuelle, la Commission doit s'attacher principalement à mettre de l'harmonie entre les différents articles du projet de convention.

M. ALEMAN (Panama) propose la clôture des débats, en application de l'article 106 du règlement intérieur, vu que la Commission est déjà éclairée sur la portée de l'amendement.

M. MOROZOV (Union des Républiques socialistes soviétiques) soulève une question d'ordre. Il attire l'attention de la Commission sur le fait que la deuxième partie de l'article X ne devrait pas être examinée, car elle n'est pas recevable. En effet, la décision de la Commission à l'égard d'une juridiction pénale internationale, lors de l'examen de l'article VII, a préjugé le sort de toutes les dispositions relatives à cette juridiction: la compétence du tribunal pénal international n'a pas été admise, il ne saurait donc être question d'en faire mention dans un autre article de la convention.

En conséquence, il n'y a pas lieu d'examiner la deuxième partie de l'article X.

M. MAKTOS (Etats-Unis d'Amérique), sur la même question d'ordre, partage le point de vue du représentant de l'URSS; il estime qu'il n'y a pas lieu de mettre aux voix l'amendement de l'Iran.

Le PRÉSIDENT déclare que l'amendement de l'Iran doit être mis aux voix, puisque la Commission en a décidé ainsi par son vote précédent.

Il met aux voix la motion de clôture du débat.

Par 21 voix contre une, avec 8 abstentions, la motion de clôture du débat est approuvée.

Le PRÉSIDENT met aux voix l'amendement de l'Iran [*A/C.6/217*], tendant à supprimer le deuxième membre de phrase de l'article X.

Par 22 voix contre 8, avec 6 abstentions, l'amendement est adopté.

Le PRÉSIDENT ouvre le débat sur l'amendement de l'Australie [*A/C.6/265*], tendant à ajouter à l'article X un deuxième paragraphe, ainsi conçu:

"En ce qui concerne la prévention et la répression des actes de génocide, une Partie à la Convention peut faire appel à tout organe compétent des Nations Unies pour qu'il prenne toute action compatible avec la Charte des Nations Unies."

M. TARAZI (Syrie) estime que cet amendement n'est pas recevable, étant donné la décision de la Commission à l'égard de l'article VIII, relatif à l'action des organes des Nations Unies, et des amendements dont il était l'objet (101ème séance). L'amendement de l'Australie tend à reprendre le principe de l'article VIII; il ne peut donc être examiné que si la Commission en décide ainsi à la majorité des deux tiers, conformément à l'article 112 du règlement intérieur.

Le PRÉSIDENT partage le point de vue du représentant de la Syrie et déclare que l'amendement de l'Australie ne sera mis en discussion que si la Commission en décide ainsi à la majorité des deux tiers.

Mr. DIGNAM (Australia) said he had foreseen that his amendment would meet with that objection; he accepted the Chairman's ruling, but hoped that the Committee would decide in favour of considering an amendment on such an important question.

The discussion on articles VIII and X had shown that it was necessary to include in article X a provision relating to action by the United Nations, when it was remembered how the decision to delete article VIII had been secured. In the first place, two more votes would have been sufficient to constitute the two-thirds majority which would have made possible the resumption of the consideration of article VIII; moreover, several representatives had said they had voted against further consideration of the article solely for reasons of principle.

If the Committee agreed to consider the Australian amendment, no lengthy discussion would be necessary. If that amendment were adopted, a provision would be inserted in the convention which would be a proof of general confidence in the organs of the United Nations.

Mr. MAKTOS (United States of America) was quite ready to revise the position he had taken up at the time of the vote (102nd meeting) on the proposal to reconsider article VIII, as he did not wish to impede the study of a question involving a principle contained in the Charter.

Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) said rule 112 of the rules of procedure contained nothing expressly barring the reintroduction, in the course of the same session, of a proposal previously adopted or rejected. He drew the Committee's attention, however, to the gravity of the precedent it would set by voting twice, almost in succession, on whether a proposal should be considered afresh. Such a procedure might have very important consequences. Should the Committee consider, however, that the question before it was so important as to justify that procedure, there was nothing in the rules of procedure against it.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) appealed against the Chairman's ruling to the effect that the Australian amendment was not in order.

Mr. LACHS (Poland) pointed out that the situation differed from that which had confronted the Committee in connexion with article VIII. The issue was not whether to reconsider a proposal, but whether to study an amendment occasioned by the new circumstances which had arisen following the Committee's decision on article X.

Mr. CHAUMONT (France) agreed with the Polish representative. The Committee, when discussing article VIII (101st meeting), had been dealing with the *Ad Hoc* Committee's text and the joint amendment submitted by the USSR and France. For article X, the Committee had adopted a text fairly far removed from that of the *Ad Hoc* Committee. That new text placed a restrictive interpretation on the competence of certain international bodies. The case was therefore quite different from that of article VIII.

M. DIGNAM (Australie) déclare qu'il avait prévu l'objection dont son amendement est l'objet et qu'il accepte la décision du Président. Il espère toutefois que la Commission se prononcera en faveur de l'examen de cet amendement, étant donné l'importance de la question.

Les débats sur l'article VIII et sur l'article X ont montré qu'il devient nécessaire de prévoir dans l'article X une disposition relative à l'action des Nations Unies, étant donné la façon dont a été obtenue la décision de supprimer l'article VIII. M. Dignam attire l'attention sur le fait que, d'une part, deux voix auraient été suffisantes pour atteindre la majorité des deux tiers qui aurait permis de reprendre l'examen de l'article VIII, et que, d'autre part, plusieurs représentants ont déclaré avoir voté contre un nouvel examen de l'article uniquement pour des raisons de principe.

Si la Commission accepte d'examiner l'amendement de l'Australie, ce dernier ne donnera pas lieu à de longs débats. En adoptant cet amendement, on insérera dans la convention une disposition qui sera une preuve de confiance générale dans les organes des Nations Unies.

M. MAKTOS (Etats-Unis d'Amérique) déclare qu'il est tout disposé à modifier l'attitude qu'il avait prise lors du vote (102ème séance) sur la proposition tendant à procéder à un nouvel examen de l'article VIII, car il ne voudrait pas faire obstacle à l'étude d'une question dont le principe figure dans la Charte.

M. KERNO (Secrétaire général adjoint chargé du Département juridique) déclare que l'article 112 du règlement intérieur ne s'oppose pas explicitement à ce que l'on cherche plusieurs fois, au cours de la même session, à reprendre l'examen d'une proposition adoptée ou rejetée. Il attire toutefois l'attention de la Commission sur la gravité du précédent qu'elle créerait en procédant à deux votes, presque successifs, sur la question de savoir si une proposition sera examinée à nouveau; une telle procédure pourrait avoir des conséquences très importantes. Toutefois, si la Commission estime que la question dont elle est saisie est d'une importance telle que cette procédure est nécessaire, aucune disposition du règlement intérieur ne s'y oppose.

M. KOVALENKO (République socialiste soviétique d'Ukraine) fait appel de la décision du Président, aux termes de laquelle l'amendement de l'Australie n'est pas recevable.

M. LACHS (Pologne) fait remarquer que la situation actuelle est différente de celle qui se présentait à propos de l'article VIII. Il ne s'agit pas maintenant de reprendre l'examen d'une proposition, mais d'étudier un amendement dû aux nouvelles circonstances créées par la décision de la Commission sur l'article X.

M. CHAUMONT (France) partage le point de vue du représentant de la Pologne. Lors de l'examen de l'article VIII (101ème séance), la Commission était saisie du texte du Comité spécial et de l'amendement commun de l'URSS et de la France; en ce qui concerne l'article X, la Commission a adopté un texte qui correspond d'assez loin à celui du Comité spécial: ce nouveau texte donne lieu à une interprétation restrictive de la compétence de certains organismes internationaux; le cas est donc totalement différent de celui de l'article VIII.

Mr. Chaumont held that it was not a question of reopening discussion on the principle of article VIII, but simply of relating the basic idea of the joint amendment of Belgium and the United Kingdom to another, more general idea, which was contained in the Australian amendment. The question was whether or not the Committee agreed with the Chairman's view. The appeal made by the representative of the Ukrainian Soviet Socialist Republic was fully warranted.

The Chairman was overruled by 24 votes to 8, with 5 abstentions.

Mr. MAKTOS (United States of America) explained that he had abstained because he was opposed to setting a dangerous precedent of the type mentioned by the Assistant Secretary-General. He felt, nevertheless, that the question under discussion was of fundamental importance.

Mr. DAVIN (New Zealand) explained that he had voted in favour of upholding the Chairman's ruling because he held that ruling to be correct. If, however, a vote had been taken on the question as to whether the item was to be reconsidered, he would have voted in favour of such reconsideration.

Mr. FEAVER (Canada) said he had voted in favour of upholding the Chairman's ruling on the grounds that a dangerous precedent might be set by recognizing the possibility of reconsidering matters which had already been decided by the Committee and renewed discussion of which had already been disallowed. He had no objection, however, to the Australian amendment, the substance of which was in keeping with certain provisions of the Charter.

Mr. MESSINA (Dominican Republic) said he had abstained for the same reasons as the United States representative. He would have voted in favour of reconsideration if the question had been put to the vote in that form.

Mr. TARAZI (Syria) explained that he had voted in favour of upholding the Chairman's ruling because the rules of procedure stipulated that a two-thirds majority of the Committee was required for the resumption of the consideration of a proposal. The Syrian delegation, however, was in favour of the Australian amendment, just as it had already voted in favour of the amendment to article VIII submitted by the USSR and France (102nd meeting).

The CHAIRMAN called upon the Committee to continue the discussion on the Australian amendment.

Mr. Ti-tsun LI (China) supported the Australian amendment. He did not share the point of view of delegations which might oppose that amendment on the grounds that it merely reproduced certain provisions of the Charter. The text proposed by Australia was not a mere repetition of the Charter, since it applied specifically to the case of genocide; in any case, it was sound practice to restate principles which could only strengthen the convention. Moreover, the adoption of the Australian amendment would preclude all possible doubts or disputes regarding the competence of the organs of the United Nations in cases of genocide.

M. Chaumont estime qu'il ne s'agit pas de remettre en question le principe de l'article VIII, mais simplement de lier l'idée de l'amendement commun de la Belgique et du Royaume-Uni à une autre idée plus générale, qui est celle de l'amendement de l'Australie. La question est donc de savoir si la Commission partage, ou non, l'opinion du Président: l'appel fait par le représentant de la République socialiste soviétique d'Ukraine est tout à fait justifié.

Par 24 voix contre 8, avec 5 abstentions, la décision du Président est annulée.

M. MAKTOS (Etats-Unis d'Amérique) déclare qu'il s'est abstenu, parce qu'il estime qu'il ne faut pas créer un précédent dangereux, comme l'a signalé le Secrétaire général adjoint, mais que, d'autre part, la question en discussion est d'une importance primordiale.

M. DAVIN (Nouvelle-Zélande) explique qu'il a voté en faveur du maintien de la décision du Président, car il estime que cette décision était correcte; toutefois, s'il y avait eu un vote sur la question de savoir si le point devait être examiné à nouveau, il aurait voté en faveur d'un nouvel examen.

M. FEAVER (Canada) déclare qu'il a voté en faveur du maintien de la décision du Président, parce qu'il estime que l'on risque de créer un précédent dangereux en admettant la possibilité d'examiner à nouveau des questions qui ont déjà fait l'objet d'une décision de la Commission et dont une remise en discussion a déjà été rejetée. Toutefois, il n'a aucune objection contre l'amendement de l'Australie, dont la substance est conforme à certaines dispositions de la Charte.

M. MESSINA (République Dominicaine) déclare qu'il s'est abstenu pour les mêmes raisons que le représentant des Etats-Unis: il aurait voté en faveur d'un nouvel examen, si la question avait été ainsi mise aux voix.

M. TARAZI (Syrie) explique qu'il a voté en faveur du maintien de la décision du Président, étant donné que le règlement intérieur exige une majorité des deux tiers pour reprendre l'examen d'une proposition; toutefois, la délégation de la Syrie est en faveur de l'amendement de l'Australie, tout comme elle avait déjà voté en faveur de l'amendement de l'URSS et de la France à l'article VIII (102ème séance).

Le PRÉSIDENT invite la Commission à poursuivre le débat sur l'amendement de l'Australie.

M. Ti-tsun LI (Chine) appuie l'amendement présenté par l'Australie. Il ne partage pas le point de vue des délégations qui pourraient s'opposer à cet amendement sous prétexte qu'il se contente de reprendre certaines dispositions de la Charte; en effet, le texte proposé par l'Australie n'est pas une simple répétition de la Charte, puisqu'il s'applique spécifiquement au cas du génocide; en outre, il est toujours bon de répéter des principes qui ne peuvent que donner plus de force à la convention. En outre, l'adoption de l'amendement de l'Australie supprimerait tous les doutes ou contestations possibles sur la compétence des organes des Nations Unies dans les cas de génocide.

Annex 54

UNGA, Sixth Committee, Genocide – Draft Convention and Report of the Economic and Social Council, Text as adopted by the Sixth Committee for articles VII to XIII of the draft Convention (E/794), UN doc. A/C.6/269, 15 November 1948

Available at:

http://undocs.org/A/C.6/269

French version available at:

http://undocs.org/fr/A/C.6/269

Annex 54

United Nations | Nations Unies | UNRESTRICTED

GENERAL ASSEMBLY | ASSEMBLEE GENERALE

A/C.6/269
15 Novemb
ORIGINAL:

Dual Distr:

Third session
SIXTH COMMITTEE

GENOCIDE - DRAFT CONVENTION AND REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Text as adopted by the Sixth Committee for articles VII to XIII of the draft Convention (E/794)

Article VII

Persons charged with genocide or any of the other acts enumerated article IV shall be tried by a competent tribunal of the State in the territory of which the act was committed.

Article VIII

Deleted.

Article IX

1. Genocide and the other acts enumerated in article IV shall not be considered as political crimes for the purpose of extradition.

2. Each party to this Convention pledges itself to grant extradition in such cases in accordance with its laws and treaties in force.

Article X

Any dispute between the High Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including disputes relating to the responsibility of a State for any of the acts enumerated in articles II and IV, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

With respect to the prevention and suppression of acts of genocide, a party to the present Convention may call upon any competent organ of t United Nations to take such action as may be appropriate under the Chart of the United Nations.

Article XI

The present Convention of which the Chinese, English, French, Russi and Spanish texts are equally authentic, shall bear the date of .....

Article XII

1. The present Convention shall be open until 31 ..... 194... for /signature

dd

signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

2. After 1 ..... 194.. the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State that has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Any High Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that High Contracting Party is responsible.

Article XIII

1. The present Convention shall come into force on the ninetieth day following the receipt by the Secretary-General of the United Nations of not less than twenty instruments of ratification or accession.

2. Ratification or accession received after the Convention has come into force shall become effective as from the ninetieth day following the date of deposit with the Secretary-General of the United Nations.

Annex 55

UNGA, Sixth Committee, Genocide: Draft Convention and Report of the Economic and Social Council (E/794), Draft resolutions proposed by the Drafting Committee, UN doc. A/C.6/289, 23 November 1948

Available at:

http://undocs.org/A/C.6/289

French version available at:

http://undocs.org/fr/A/C.6/289

United Nations Nations Unies UNRES...

GENERAL ASSEMBLY ASSEMBLEE GENERALE

A/C.6/289
23 November 1948

ORIGINAL: ENGLISH-FRENCH

Dual distribution

Third session
SIXTH COMMITTEE

GENOCIDE: DRAFT CONVENTION AND REPORT OF THE ECONOMIC AND SOCIAL COUNCIL (E/794)

Draft resolutions proposed by the Drafting Committee

I.

THE GENERAL ASSEMBLY

APPROVES the annexed Convention on the prevention and punishment of the crime of genocide and proposes it for signature and ratification or accession in accordance with its article XI.

ANNEX

CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

THE CONTRACTING PARTIES,

HAVING CONSIDERED the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world;

RECOGNIZING that at all periods of history genocide has inflicted great losses on humanity; and

BEING CONVINCED that, in order to liberate mankind from such an odious scourge, international co-operation is required;

HEREBY AGREE AS HEREINAFTER PROVIDED:

ARTICLE I

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

/ARTICLE II

dd

ARTICLE II

In the present Convention genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, religious or political group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children from one human group to another.

ARTICLE III

The following acts shall be punishable:

(a) Genocide;

(b) Conspiracy to commit genocide;

(c) Direct and public incitement to commit genocide;

(d) Attempt to commit genocide;

(e) Complicity in genocide.

ARTICLE IV

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

ARTICLE V

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.

ARTICLE VI

Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed.

ARTICLE VII

Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

ARTICLE VIII

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as dd /they

they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.

ARTICLE IX

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

ARTICLE X

The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of . . . . . .

ARTICLE XI

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950 the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations.

ARTICLE XII

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

ARTICLE XIII

On the day when the first twenty instruments of ratification have been deposited the Secretary-General shall draw up a proces-verbal and transmit a copy of it to each Member of the United Nations and to each of the non-member States contemplated in Article XI.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

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/ARTICLE XIV

ARTICLE XIV

The present Convention shall remain in effect for a period of ten years dating from its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

ARTICLE XV

If, as a result of denunciations, the number of parties to the present Convention should become less than sixteen the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

ARTICLE XVI

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

ARTICLE XVII

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in article XI of all signatures, ratifications and accessions received in accordance with articles XI and XIII, of the date upon which the present Convention has come into force, of denunciations received in accordance with article XIV, of the abrogation of the Convention effected as provided by article XV, and of requests for revision of the Convention made in accordance with article XVI.

ARTICLE XVIII

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to all Members of the United Nations and to the non-member States contemplated in article XI.

ARTICLE XIX

The present Convention shall be registed by the Secretary-General of the United Nations on the date of its coming into force.

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dd /II.

II.

THE GENERAL ASSEMBLY,

CONSIDERING that the discussion of the Convention on the Prevention and Punishment of the Crime of Genocide has raised the question of the desirability and possibility of having persons charged with genocide tried by a competent international tribunal;

CONSIDERING that in the course of development of the international community the need for trial of certain crimes under international law by international judicial organ will be more and more recognized;

INVITES the International Law Commission to study the desirability and possibility of establishing an international judicial organ for the trial persons charged with genocide or other crimes over which jurisdiction will be conferred upon that organ by international conventions;

REQUESTS the International Law Commission in carrying out this task to pay attention to the possibility of establishing a Criminal Chamber of the International Court of Justice.

III.

THE GENERAL ASSEMBLY recommends that Parties to the Convention on the Prevention and Punishment of the Crime of Genocide which administer dependent territories, should take such measures as are necessary and feasible to enable the provisions of the Convention to be extended to those territories as soon as possible.

Annex 56

UNGA, Sixth Committee, Hundred and Thirty-Third Meeting, Continuation of the consideration of the draft convention on genocide [E/794]: report to the Economic and Social Council [A/633] (2 December 1948), UN doc. A/C.6/SR.133 [extract]

Available at:

http://undocs.org/A/C.6/SR.133

The CHAIRMAN put to the vote draft resolution III, as submitted by the Drafting Committee [*A/C.6/289*].

The draft resolution was adopted by 29 votes to none, with 7 abstentions.[1]

Mr. QUIJANO (Argentina) asked whether it would be possible for the Secretariat to provide a Spanish version of the convention.

Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) stated that copies of the convention would be distributed as soon as possible in the five official languages.

A question had also been raised as to whether it would be possible to proceed to the signing of the convention at the current session of the General Assembly. After making enquiries on the subject, he had found that it might be possible to do so. In view of the short time available, however, it would not be possible to have the convention printed; typewritten copies in four of the official languages and a calligraphic copy in Chinese could, he thought, be provided.

Mr. Kerno drew attention to the fact that before a representative could sign the convention on behalf of his Government, he had to have full powers to do so. For those representatives who had not already been accredited with full powers, he stated that it had been the practice for the Secretary-General to accept as credentials conferring provisional full powers a telegram signed by the Head or the Foreign Minister of the State concerned and followed by a confirmatory letter. He would remind representatives that they themselves would have to take the necessary steps in the matter.

The meeting rose at 6 p.m.

HUNDRED AND THIRTY-THIRD MEETING

Held at the Palais de Chaillot, Paris, on Thursday, 2 December 1948, at 11 a.m.

Chairman: Mr. R. J. ALFARO (Panama).

86. Continuation of the discussion on the draft convention on genocide [*E/794*]: report of the Economic and Social Council [*A/633*]

TEXT SUBMITTED BY THE DRAFTING COMMITTEE

The CHAIRMAN invited those members of the Committee who so desired to explain their vote on draft resolution I and on the annexed draft convention for the prevention and punishment of the crime of genocide submitted by the Drafting Committee [*A/C.6/289*].

He reminded the meeting that, in accordance with the rule adopted by the Committee (81st meeting), speeches should be limited to five minutes; and he asked the delegations concerned to confine their remarks to an explanation of their vote.

[1] The texts of the three draft resolutions and of the draft convention, as adopted by the Committee, are contained in document A/C.6/289/Rev.1.

Le PRÉSIDENT met aux voix le projet de résolution III présenté par le Comité de rédaction [*A/C.6/289*].

Par 29 voix contre zéro, avec 7 abstentions, le projet de résolution est adopté.[1]

M. QUIJANO (Argentine) demande au Secrétariat s'il lui serait possible de fournir un texte espagnol de la convention.

M. KERNO (Secrétaire général adjoint chargé du Département juridique) répond que l'on distribuera aussitôt que possible des exemplaires de la convention rédigée dans les cinq langues officielles.

On s'est demandé également si l'on pourrait procéder à la signature de la convention au cours de la présente session de l'Assemblée générale. Renseignements pris, le Secrétaire général adjoint pense que ce sera possible. Mais, en raison du peu de temps dont on dispose, on ne pourra pas avoir la convention imprimée. M. Kerno pense que le Secrétariat pourra fournir des exemplaires dactylographiés dans quatre des cinq langues officielles, ainsi qu'un exemplaire calligraphié en chinois.

M. Kerno fait observer que, pour signer la convention pour le compte de leurs Gouvernements, les représentants doivent avoir pleins pouvoirs à cet effet. Pour les représentants qui ne sont pas encore accrédités avec pleins pouvoirs, M. Kerno indique que le Secrétaire général a pris pour habitude de tenir pour valable, comme document conférant provisoirement les pleins pouvoirs, un télégramme signé du chef de l'Etat intéressé ou de son Ministre des affaires étrangères et suivi d'une lettre de confirmation. Le Secrétaire général adjoint tient à rappeler aux représentants qu'ils ont, en la matière, à prendre eux-mêmes les dispositions nécessaires.

La séance est levée à 18 heures.

CENT-TRENTE-TROISIEME SEANCE

Tenue au Palais de Chaillot, Paris, le jeudi 2 décembre 1948, à 11 heures.

Président: M. R. J. ALFARO (Panama).

86. Suite de l'examen du projet de convention sur le génocide [*E/794*]: rapport du Conseil économique et social [*A/633*]

TEXTE SOUMIS PAR LE COMITÉ DE RÉDACTION

Le PRÉSIDENT invite les membres de la Commission qui le désirent à expliquer leur vote sur le projet de résolution I et sur le projet de convention pour la prévention et la répression du crime de génocide y annexé, soumis par le Comité de rédaction [*A/C.6/289*].

Il rappelle que les interventions ne doivent pas dépasser cinq minutes, conformément à la règle adoptée par la Commission (81ème séance), et il prie les délégations intéressées de se borner à exposer les raisons qui les ont poussées à se prononcer comme elles l'on fait.

[1] Le texte des trois projets de résolution et du projet de convention, tel qu'il a été adopté par la Commission, figure au document A/C.6/289/Rev.1.

Mr. Morozov (Union of Soviet Socialist Republics) explained that his delegation had abstained from voting on the draft convention because that draft omitted a number of points which the USSR wished to see included. He stated, in that connexion, that his delegation wished to submit several amendments to the draft when it came up for debate at a plenary meeting of the General Assembly.

Mr. Gross (United States of America) said his delegation had voted for the resolution and the annexed draft convention on genocide for the same reasons as those which had led his delegation to give most fervent support, from the very beginning, to the work of preparing an international convention for the prevention and punishment of that odious crime. He hoped that the convention could be signed during the third session of the General Assembly.

Mr. Gross did not deny that his delegation was deeply disturbed by the fact that the draft convention had not received the unanimous approval of the Sixth Committee. Mr. Morozov's statement that the Soviet Union delegation would propose amendments to the draft convention during the discussion in the plenary session of the Assembly served merely to increase the anxiety felt by the United States delegation, which had always been of the opinion that motions for a reconsideration of questions on which the Committee had already taken a decision should be submitted to the Committee itself. The United States delegation was therefore obliged to regard the attitude of the USSR delegation as an attempt to frustrate the painstaking and diligent work of the Sixth Committee.

The United States delegation had spared no effort to obtain unanimous approval for the convention on genocide. It was for that reason that it had agreed to the omission of political groups among the groups to be protected by the convention; and the abstention of the Soviet Union and certain other States when the vote was taken (128th meeting) had come as a surprise. Mr. Gross hoped that all the members of the Committee would unite their efforts to ensure that the convention, which no one considered perfect, but which nevertheless represented the best possible compromise, would receive the unanimous approval of all the Members of the United Nations.

Finally, the United States representative made the following observations on certain provisions of the convention.

Article IX stipulated that disputes between the contracting parties relating to the interpreation, application or fulfilment of the convention "including those relating to the responsibility of a State for genocide or any of the other acts mentioned in article III" should be submitted to the International Court of Justice. If the words "responsibility of a State" were taken in their traditional meaning of responsibility towards another State for damages inflicted, in violation of the principles of international law, to the subjects of the plaintiff State; and if, similarly, the words "disputes . . . relating to the . . . fulfilment" referred to disputes concerning the interests of subjects of the plaintiff State, then those words would give rise to no objection. But if, on the

M. Morozov (Union des Républiques socialistes soviétiques) explique que sa délégation s'est abstenue de prendre part au vote sur le projet de convention parce que ce projet ne contient pas un certain nombre d'éléments que l'URSS aurait voulu y voir figurer. Il signale à ce propos que sa délégation entend présenter des amendements à ce projet, lors du débat en séance plénière de l'Assemblée générale.

M. Gross (Etats-Unis d'Amérique) déclare que sa délégation a voté en faveur de la résolution contenant en annexe le projet de convention sur le génocide pour les raisons mêmes qui l'ont poussée à donner, dès le début, son appui le plus chaleureux à l'initiative d'élaborer une convention internationale pour prévenir et réprimer ce crime odieux. Il espère que la convention pourra être signée au cours de la troisième session de l'Assemblée générale.

M. Gross ne cache pas que sa délégation est vivement préoccupée par le fait que le projet de convention n'a pas fait l'objet d'une approbation unanime au sein de la Sixième Commission. La déclaration de M. Morozov, selon laquelle la délégation de l'Union soviétique proposera des amendements au projet de convention au cours du débat en séance plénière de l'Assemblée, ne fait qu'ajouter aux inquiétudes ressenties par la délégation des Etats-Unis qui avait toujours pensé que les motions tendant à obtenir un nouvel examen des questions sur lesquelles la Commission s'est déjà prononcée seraient présentées à la Commission elle-même. La délégation des Etats-Unis se voit obligée d'interpréter l'attitude de la délégation de l'URSS comme une tentative pour faire échec aux travaux assidus et laborieux de la Sixième Commission.

La délégation des Etats-Unis n'a épargné aucun effort pour assurer à la convention sur le génocide une approbation unanime. C'est ainsi qu'elle a renoncé à faire figurer les groupes politiques parmi les groupes protégés par la convention et elle n'a pas manqué d'être surprise par l'abstention de l'Union soviétique et de certains autres Etats lors du vote sur cette question (128ème séance). M. Gross exprime l'espoir que tous les membres de la Commission joindront leurs efforts pour que cette convention, qui n'est parfaite aux yeux de personne mais qui constitue néanmoins le meilleur compromis auquel on puisse aboutir, obtienne l'approbation unanime de tous les Etats Membres de l'Organisation des Nations Unies.

Enfin, le représentant des Etats-Unis formule les observations suivantes sur certaines dispositions de la convention.

L'article IX prévoit que les différends entre les parties contractantes, relatifs à l'interprétation, à l'application ou à l'exécution de la convention, "y compris ceux relatifs à la responsabilité d'un Etat en matière de génocide ou de l'un quelconque des autres actes énumérés à l'article III" seront soumis à la Cour internationale de Justice. Si les mots "responsabilité d'un Etat" sont pris dans leur acception traditionnelle de responsabilité envers un autre Etat pour dommages causés, en violation des principes de droit international, à des ressortissants de l'Etat demandeur, et, de même, si les mots "différends . . . relatifs . . . à l'exécution" désignent les différends mettant en jeu des intérêts de ressortissants de l'Etat demandeur, ces mots ne rencontreraient aucune

other hand, the expression "responsibility of a State" were not used in the traditional meaning, and if it signified that a State could be sued for damages in respect of injury inflicted by it on its own subjects, then there would be serious objections to that provision; and the United States Government would have reservations to make about that interpretation of the phrase.

With regard to article VII, relating to extradition, the United States representative declared that, until the United States Congress had passed the legislative measures necessary to bring the convention into force, the United States Government could not hand over any person accused of a crime by virtue of which he was not already liable to extradition under the terms of the existing laws. Moreover, the provisions of the United States Constitution relating to the non-retroactivity of laws were such as to prevent the United States Government from extraditing any person accused of a crime committed before the promulgation of the law defining that new crime.

Mr. LITAUER (Poland) speaking on a point of order, asked the Chairman if it was permissible for delegations, when explaining their vote, to criticize the vote of other delegations.

Mr. MOROZOV (Union of Soviet Socialist Republics) pointed out that the United States representative had acted contrary to the rules of procedure in criticizing the attitude of the USSR delegation and giving it a tendentious interpretation, when explaining his own delegation's vote.

Mr. Morozov, while protesting against that interpretation, stressed the fact that his delegation's sole purpose in proposing amendments to the draft convention was to improve the text of that convention, and to make it a more effective instrument for the prevention and punishment of genocide.

The representative of the Soviet Union asked the Chairman to draw the attention of the members of the Committee to the fact that, when explaining their votes, they should limit themselves to explaining the reasons for their own vote, without embarking on criticism of the attitude of other delegations. Otherwise those who spoke first would be at a disadvantage with regard to the speakers who followed them and would be obliged to speak a second time.

The CHAIRMAN recalled that at the beginning of the meeting, he had told the members of the Committee that they should make their statements as concise and relevant as possible; he hoped they would comply with his recommendations.

Mr. DE MARCHENA DUJARRIC (Dominican Republic) explained that the fact that he had voted in favour of the draft convention in no way implied that the delegation of the Dominican Republic repudiated the reservations it had expressed during the discussion of the draft, particularly with regard to the articles against which it had voted.

Mr. SUNDARAM (India) said his delegation had voted in favour of resolution I and the draft convention although that draft contained one or two unsatisfactory features. His Government, however, reserved its position with regard to articles

objection. Mais si l'expression "responsabilité d'un Etat" n'est pas employée dans son sens traditionnel et si elle signifie qu'un Etat peut être tenu à des dommages-intérêts pour le préjudice causé par lui à ses propres ressortissants, il y a de sérieuses objections à élever contre cette disposition et le Gouvernement des Etats-Unis formule des réserves quant à cette interprétation.

En ce qui concerne l'article VII, relatif à l'extradition, le représentant des Etats-Unis déclare que tant que le Congrès des Etats-Unis n'aura pas pris les mesures législatives nécessaires pour mettre la convention à exécution, le Gouvernement des Etats-Unis ne pourra pas livrer une personne accusée d'un crime pour lequel elle ne serait déjà sujette à extradition aux termes des lois existantes. De plus, les dispositions de la Constitution des Etats-Unis relatives à la non-rétroactivité des lois empêcheraient le Gouvernement des Etats-Unis d'accorder l'extradition de toute personne accusée d'avoir commis un crime antérieurement à la promulgation de la loi définissant le nouveau crime.

M. LITAUER (Pologne), soulevant une motion d'ordre, demande au Président s'il est permis aux délégations, lorsqu'elles expliquent leur vote, de critiquer celui des autres délégations.

M. MOROZOV (Union des Républiques socialistes soviétiques) fait remarquer que c'est en violation du règlement intérieur que le représentant des Etats-Unis, au cours des explications qu'il a fournies sur le vote de sa délégation, a critiqué l'attitude de la délégation de l'URSS et en a donné une interprétation tendancieuse.

M. Morozov, tout en protestant contre une telle interprétation, souligne qu'en proposant des amendements au projet de convention, sa délégation ne vise à rien d'autre qu'à améliorer le texte de ce projet, en vue de rendre la convention plus efficace pour prévenir et réprimer le génocide.

Le représentant de l'Union soviétique demande au Président d'attirer l'attention des membres de la Commission sur le fait qu'il convient, dans les explications de vote, de se limiter à exposer les raisons qui ont motivé le vote, sans critiquer l'attitude des autres délégations. Autrement, ceux qui parlent les premiers se trouveraient dans une position désavantageuse par rapport aux orateurs qui suivent et ils seraient obligés de prendre la parole à nouveau.

Le PRÉSIDENT rappelle qu'il a déjà souligné, au début de la séance, la nécessité pour les membres de la Commission de rendre leurs déclarations aussi précises et aussi concises que possible et il espère qu'ils ne manqueront pas de se conformer à ses recommandations.

M. DE MARCHENA DUJARRIC (République Dominicaine) tient à préciser que son vote en faveur du projet de convention n'implique nullement l'abandon des vues et des réserves exprimées par la délégation de la République Dominicaine au cours de la discussion de ce projet, notamment en ce qui concerne les articles contre lesquels elle s'est prononcée.

M. SUNDARAM (Inde) dit que sa délégation a voté en faveur de la résolution I et du projet de convention, bien que ce projet contienne un ou deux éléments peu satisfaisants. Il réserve toutefois l'attitude de son Gouvernement à l'égard

VI and IX of the convention. It was possible, in fact, that the Indian Government might not be able to accept those two articles *in toto,* or without some reservations.

Mr. LITAUER (Poland) reminded the meeting of the active part his delegation had played in the preparatory work on the convention.

Poland, which had lost six million of its citizens and made very heavy sacrifices during the Second World War, had hoped, with every right, that the convention would be drawn up in such a way as to constitute an effective weapon against genocide, and serve, first and foremost, to prevent the repetition of that dastardly crime. It was for that reason that the Polish delegation had repeatedly stressed the need to ensure the preventive value of the convention.

Mr. Litauer emphasized his Government's disappointment at the way in which the war criminals who had committed the atrocities in Poland during the nazi occupation had been prosecuted and punished: only a few thousand criminals had been handed over to justice; others, including some of the most notorious, had resumed their place in the political life of Germany, or, on account of influential connexions, escaped the punishment they deserved. In view of those considerations, it was easy to understand that Poland simply could not conceive that half-measures would be effective for combating genocide in the future.

In order that the convention should ensure the prevention of genocide, the Polish delegation had advocated the prohibition of propaganda against racial, religious and national groups; the prohibition of any organization the purpose of which was to incite to genocide; and the punishment of acts preparatory to such crimes. Unfortunately, such provisions had not been included in the convention.

The Polish delegation had also asked that the definition of genocide should include the odious crimes aimed at the destruction of a nation's art and culture. By voting against the suggestions of the Polish delegation, and the amendments which Poland had supported, the majority of the Committee had merely succeeded in reducing the scope of the convention to a considerable extent.

The Polish delegation was still of the opinion that the only effective way to combat genocide was to take appropriate preventive measures. The important point was not to punish a few hundred or even a few thousand criminals after they had committed their crimes, but to take measures to ensure that there should be no repetition of the heinous crimes which had shocked the conscience of mankind. It was regrettable to note that the draft convention did not provide sufficient guarantees to that effect. That was why the Polish delegation, while recognizing that certain of the provisions of the draft convention were indisputably constructive, had felt that it could not vote in favour of the draft, and had been obliged to abstain.

Mr. RAAFAT (Egypt) said that his country which, with Panama and Cuba, had been one of the promoters of the convention on genocide in 1947,[1]

[1] See document A/512.

des articles VI et IX de la convention. Il est possible, en effet, que le Gouvernement de l'Inde ne puisse accepter ces deux articles dans leur totalité ou sans formuler de réserves.

M. LITAUER (Pologne) rappelle la part active prise par sa délégation aux travaux préparatoires de la convention.

Ayant perdu, au cours de la deuxième guerre mondiale, six millions de ses citoyens, ayant eu à subir les plus lourds sacrifices, la Pologne était en droit d'espérer que la convention serait rédigée de manière à constituer un instrument efficace de lutte contre le génocide, devant servir, avant tout, à empêcher le renouvellement de ce crime effroyable; c'est pourquoi la délégation polonaise a souligné à plusieurs reprises la nécessité d'assurer une valeur préventive à la convention.

M. Litauer tient à souligner combien son Gouvernement est déçu par la façon dont on a poursuivi et châtié les criminels de guerre qui ont commis des atrocités en Pologne pendant l'occupation nazie: seuls, quelques milliers de criminels furent traduits en justice; d'autres, parmi les plus notoires, ont repris leur place dans la vie politique de l'Allemagne ou bien, grâce à certaines protections, ont échappé à la juste punition qu'ils méritent. Si l'on garde ces considérations présentes à l'esprit, il est facile de comprendre que la Pologne ne puisse concevoir l'efficacité de demi-mesures pour combattre le génocide à l'avenir.

Pour que la convention assure la prévention du génocide, la délégation polonaise avait demandé que soit interdite la propagande contre des groupes raciaux, religieux et nationaux, de même que toute organisation visant à pousser à l'accomplissement du génocide et que soient punis les actes préparatoires de ces crimes. Malheureusement, de telles dispositions n'ont pas été insérées dans la convention.

La délégation polonaise avait également demandé que la définition du génocide comprenne les crimes odieux tendant à la destruction de l'art ou de la culture d'une nation. En se prononçant contre les suggestions de la délégation de la Pologne et les amendements que celle-ci avait appuyés, la majorité de la Commission n'a fait qu'affaiblir considérablement la portée de la convention.

La délégation polonaise est toujours d'avis qu'on ne peut lutter efficacement contre le génocide que si l'on prend des mesures préventives appropriées. Ce qui importe, en effet, ce n'est pas de punir quelques centaines ou même quelques millieurs de criminels après qu'ils auront commis leurs crimes, mais de faire en sorte que les actes odieux qui ont bouleversé la conscience humaine ne se reproduisent pas à l'avenir. Or, il est regrettable de constater que le projet de convention ne donne pas de garanties suffisantes à cet effet. C'est pourquoi, tout en reconnaissant que certaines dispositions du projet de convention sont indiscutablement constructives, la délégation de la Pologne n'a pu voter en faveur de ce projet et s'est vue contrainte de s'abstenir.

M. RAAFAT (Egypte) dit que son pays qui, avec le Panama et Cuba, a été, en 1947, l'un des promoteurs de la convention sur le génocide[1],

[1] Voir le document A/512.

Annex 57

UNGA, Genocide: Draft Convention and Report of the Economic and Social Council, Report of the Sixth Committee, UN doc. A/760, 3 December 1948 [extract]

Available at:

http://undocs.org/A/760

French version available at:

http://undocs.org/fr/A/760

Annex 57

United Nations | Nations Unies | UNRESTRICTED

GENERAL ASSEMBLY | ASSEMBLEE GENERALE

A/760
3 December 1948

ORIGINAL: ENGLISH

Dual Distribution

Third session

GENOCIDE: DRAFT CONVENTION AND REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Report of the Sixth Committee

Rapporteur: Mr. J. Spiropoulos (Greece)

1. In resolution 96 (I) of 11 December 1946, the General Assembly, at the second part of its first session, affirmed that genocide is a crime under international law which the civilized world condemns. At the same time the Assembly requested the Economic and Social Council to undertake the necessary studies with a view to drawing up a draft Convention on the crime of genocide to be submitted to the second regular session of the General Assembly.

2. The Economic and Social Council, by resolution 47 (IV) of 28 March 1947, instructed the Secretary-General to prepare, with the assistance of experts, a draft Convention on the crime of genocide.

3. In accordance with this instruction, the Secretary-General prepared a draft Convention which, on 7 July 1947, was transmitted to Member Governments for their comments and which, together with the comments received, was submitted to the second regular session of the General Assembly.

4. By resolution 180 (II) adopted on 21 November 1947, the General Assembly, at its second session, reaffirmed its former resolution on the crime of genocide and requested the continuation of the work begun by the Economic and Social Council concerning the suppression of this crime, including the study of the draft Convention prepared by the Secretariat.

5. Accordingly, the Economic and Social Council, at its sixth session, established an ad hoc Committee, composed of the representatives of seven Member States, to draw up a draft Convention on genocide for consideration at the next session of the Council. The ad hoc Committee met at the headquarters of the United Nations during the period from 5 April to 10 May 1948 and prepared a report containing a draft Convention on the prevention and punishment of the crime of genocide (E/794).

6. At its seventh session, the Economic and Social Council decided, by resolution 153 (VII) of 26 August 1948, to transmit to the third session of

dd 13 p. /the General Assembly

which any dispute between the Contracting Parties relating to the interpretation, application or fulfilment of the Convention, including disputes relating to the responsibility of a State for any of the acts enumerated in articles II and IV, should be submitted to the International Court of Justice, at the request of any of the Contracting Parties.

At its 105th meeting, the Committee adopted, as the second paragraph of article X,* an amendment submitted by the representative of Australia (A/C.6/265) providing that, with respect to the prevention and suppression of acts of genocide, a party to the Convention may call upon any competent organ of the United Nations to take such action as may be appropriate under the Charter of the United Nations.

16. A new article dealing with the application of the Convention to dependent territories was proposed by the representative of the United Kingdom as well as by the representative of the Ukrainian Soviet Socialist Republic. The amendment of the United Kingdom (A/C.6/236) provided that the application of the Convention might, by a notification to the Secretary-General, be extended to all or any of the territories for the conduct of whose foreign relations the Party in question is responsible. The amendment of the Ukrainian Soviet Socialist Republic (A/C.6/264) provided that the Convention should apply equally to the territory of the Contracting Parties and to all territories in regard to which they perform the functions of the governing and administering authority (including Trust and other Non-Self-Governing Territories). At its 107th meeting, the Committee rejected the Ukrainian amendment by 19 votes to 10, with 14 abstentions, but adopted the United Kingdom amendment by 18 votes to 9, with 14 abstentions. The Committee also adopted, at its 108th meeting, a draft resolution presented by the representative of Iran (resolution C), recommending Members of the United Nations administering dependent territories to take such measures as are necessary and feasible to enable the provisions of the Convention to be extended to those territories as soon as possible.

17. After having disposed of the Final Clauses in the draft Convention of the ad hoc Committee (articles XI - XIX) the Committee, at its 110th meeting, took up the question of the preamble of the Convention and adopted, by 38 votes to 9, with 5 abstentions, a text proposed by the representative of Venezuela (A/C.6/261).

18. At its 104th meeting, held on 13 November 1948, the Sixth Committee

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* By the rearrangement and renumbering of the articles decided upon by the Drafting Committee, the second paragraph of article X became article VIII of the final text.

Annex 58

UNSC, resolution 819 (1993), UN doc. S/RES/819 (1993), 16 April 1993

Alternative format available at:

http://undocs.org/S/RES/819(1993)

French version available at:

http://undocs.org/fr/S/RES/819(1993)

"The members of the Council request the Commission of Experts established pursuant to resolution 780 (1992) to carry out an investigation of these abominable practices and to make a report."

In a letter dated 9 April 1993,[23] addressed to the President of the Security Council, the Secretary-General referred to Council resolution 816 (1993) of 31 March 1993 and informed the President that pursuant to its paragraph 5, Member States concerned, acting nationally as well as through the regional arrangement of the North Atlantic Treaty Organization (NATO), had been closely coordinating with him and the United Nations Protection Force (UNPROFOR) the measures they were taking to ensure compliance with the ban on all flights in the airspace of Bosnia and Herzegovina. The Secretary-General stated that in a letter dated 8 April 1993, the Secretary-General of NATO, Mr. Manfred Worner, had informed him that the North Atlantic Council had adopted the necessary arrangements. The Secretary-General also stated that the rules of engagement established by the Member States concerned were in conformity with the requirements set out in paragraph 4 of resolution 816 (1993). The Secretary-General stated that, as requested in paragraph 2 of the resolution, UNPROFOR had modified the mechanism referred to in paragraph 3 of Council resolution 781 (1992) of 9 October 1992. The revised guidelines for the authorization of non-UNPROFOR and non-UNHCR flights in the airspace of Bosnia and Herzegovina were attached as an annex to the letter. The Secretary-General indicated that in his letter, Mr. Worner had informed him that his military authorities were prepared to begin the operation at noon GMT on Monday, 12 April 1993.

In a letter dated 10 April 1993,[24] the President of the Security Council informed the Secretary-General as follows:

"Your letter dated 9 April 1993[23] has been brought to the attention of the Security Council.

"The Council takes note that the operations authorized by its resolution 816 (1993) will start on Monday, 12 April 1993 at 1200 GMT, in accordance with the modalities described in the annex to your above-mentioned letter."

At its 3199th meeting, on 16 April 1993, the Council decided to invite the representative of Bosnia and Herzegovina to participate, without vote, in the discussion of the item entitled "The situation in the Republic of Bosnia and Herzegovina"

Resolution 819 (1993)
of 16 April 1993

The Security Council,

Reaffirming its resolution 713 (1991) of 25 September 1991 and all its subsequent relevant resolutions,

Noting that the International Court of Justice in its Order of 8 April 1993 in the case concerning application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))[25] unanimously indicated as a provisional measure that the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) should immediately, in pursuance of its undertaking in the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948,[26] take all measures within its power to prevent the commission of the crime of genocide,

Reaffirming the sovereignty, territorial integrity and political independence of the Republic of Bosnia and Herzegovina,

Reaffirming also its call on the parties and others concerned to observe immediately the cease-fire throughout Bosnia and Herzegovina,

Reaffirming further its condemnation of all violations of international humanitarian law, including, in particular, the practice of "ethnic cleansing",

Concerned by the pattern of hostilities by Bosnian Serb paramilitary units against towns and villages in eastern Bosnia, and in this regard reaffirming that any taking or acquisition of territory by the threat or use of force, including through the practice of "ethnic cleansing", is unlawful and unacceptable,

Deeply alarmed at the information provided by the Secretary-General to the Security Council on 16 April 1993 on the rapid deterioration of the situation in Srebrenica and its surrounding areas, as a result of the continued deliberate armed attacks and shelling of the innocent civilian population by Bosnian Serb paramilitary units,

Strongly condemning the deliberate interdiction by Bosnian Serb paramilitary units of humanitarian assistance convoys,

Also strongly condemning the actions taken by Bosnian Serb paramilitary units against the United Nations Protection Force, in particular, their refusal to guarantee the safety and freedom of movement of Force personnel,

Aware that a tragic humanitarian emergency has already developed in Srebrenica and its surrounding areas as a direct consequence of the brutal actions of Bosnian Serb paramilitary units, forcing the large-scale displacement of civilians, in particular women, children and the elderly,

Recalling the provisions of resolution 815 (1993) of 30 March 1993 on the mandate of the Force, and in that context acting under Chapter VII of the Charter of the United Nations,

1. *Demands* that all parties and others concerned treat Srebrenica and its surroundings as a safe area which should be free from any armed attack or any other hostile act;

2. *Demands also* to that effect the immediate cessation of armed attacks by Bosnian Serb paramilitary units against Srebrenica and their immediate withdrawal from the areas surrounding Srebrenica;

3. *Demands further* that the Federal Republic of Yugoslavia (Serbia and Montenegro) immediately cease the supply of military arms, equipment and services to the Bosnian Serb paramilitary units in the Republic of Bosnia and Herzegovina;

[23] S/25567.

[24] S/25568.

[25] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Provisional Measures, Order of 8 April 1993, I.C.J. Reports 1993*, p. 3.

[26] General Assembly resolution 260 A (III), annex.

4. *Requests* the Secretary-General, with a view to monitoring the humanitarian situation in the safe area, to take immediate steps to increase the presence of the United Nations Protection Force in Srebrenica and its surroundings, demands that all parties and others concerned cooperate fully and promptly with the Force towards that end, and requests the Secretary-General to report urgently thereon to the Security Council;

5. *Reaffirms* that any taking or acquisition of territory by the threat or use of force, including through the practice of "ethnic cleansing", is unlawful and unacceptable;

6. *Condemns and rejects* the deliberate actions of the Bosnian Serb party to force the evacuation of the civilian population from Srebrenica and its surrounding areas as well as from other parts of Bosnia and Herzegovina as part of its overall abhorrent campaign of "ethnic cleansing";

7. *Reaffirms its condemnation* of all violations of international humanitarian law, in particular the practice of "ethnic cleansing", and reaffirms that those who commit or order the commission of such acts shall be held individually responsible in respect of such acts;

8. *Demands* the unimpeded delivery of humanitarian assistance to all parts of Bosnia and Herzegovina, in particular to the civilian population of Srebrenica and its surrounding areas, and recalls that such impediments to the delivery of humanitarian assistance constitute a serious violation of international humanitarian law;

9. *Urges* the Secretary-General and the United Nations High Commissioner for Refugees to use all the resources at their disposal within the scope of the relevant resolutions of the Council to reinforce the existing humanitarian operations in Bosnia and Herzegovina, in particular Srebrenica and its surroundings;

10. *Also demands* that all parties guarantee the safety and full freedom of movement of the United Nations Protection Force and of all other United Nations personnel as well as members of humanitarian organizations;

11. *Requests* the Secretary-General, in consultation with the High Commissioner and the Force, to arrange for the safe transfer of the wounded and ill civilians from Srebrenica and its surrounding areas and urgently to report thereon to the Council;

12. *Decides* to send, as soon as possible, a mission of members of the Council[27] to Bosnia and Herzegovina to ascertain the situation and report thereon to the Council;

13. *Decides* to remain actively seized of the matter and to consider further steps to achieve a solution in conformity with its relevant resolutions.

Adopted unanimously at the 3199th meeting.

Decisions

At its 3200th meeting, on 17 April 1993, the Council decided to invite the representative of Bosnia and Herzegovina to participate, without vote, in the discussion of the item entitled:

"The situation in the Republic of Bosnia and Herzegovina:

"Letter dated 17 April 1993 from the Permanent Representative of France to the United Nations addressed to the President of the Security Council (S/25622);[17]

"Letter dated 17 April 1993 from the Permanent Representatives of Cape Verde, Djibouti, Morocco, Pakistan and Venezuela to the United Nations addressed to the President of the Security Council (S/25623)".[17]

At the same meeting, the Council decided to extend an invitation to Ambassador Dragomir Djokic, at his request, to take a place at the Council table.

At the same meeting, the Council also decided, in accordance with the understanding reached in its prior consultations, to extend an invitation to Mr. Cyrus Vance, Co-Chairman of the Steering Committee of the International Conference on the Former Yugoslavia, under rule 39 of its provisional rules of procedure.

Resolution 820 (1993)
of 17 April 1993

The Security Council,

Reaffirming all its earlier relevant resolutions,

Having considered the reports of the Secretary-General of 2[28] and 8[29] February and 12[30] and 26[31] March 1993 on the peace talks held by the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia,

Reaffirming the need for a lasting peace settlement to be signed by all of the Bosnian parties,

Reaffirming also the sovereignty, territorial integrity and political independence of the Republic of Bosnia and Herzegovina,

Reaffirming once again that any taking of territory by force or any practice of "ethnic cleansing" is unlawful and totally unacceptable, and insisting that all displaced persons be enabled to return in peace to their former homes,

Reaffirming in this regard its resolution 808 (1993) of 22 February 1993 in which it decided that an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 and requested the Secretary-General to submit a report at the earliest possible date,

Deeply alarmed and concerned about the magnitude of the plight of innocent victims of the conflict in Bosnia and Herzegovina,

Expressing its condemnation of all the activities carried out in violation of resolutions 757 (1992) of 30 May 1992 and 787 (1992) of

[27] For the membership of the mission see document S/25645 on p. 10 below.

[28] *Official Records of the Security Council, Forty-eighth Year, Supplement for January, February and March 1993*, document S/25221.

[29] Ibid., document S/25248.

[30] Ibid., document S/25403.

[31] Ibid., document S/25479.

Annex 59

UNSC, resolution 838 (1993), UN doc. S/RES/838 (1993), 10 June 1993

Alternative format available at:

http://undocs.org/S/RES/838(1993)

French version available at:

http://undocs.org/fr/S/RES/838(1993)

2. *Commends* the peace plan for the Republic of Bosnia and Herzegovina as contained in document S/25479;

3. *Reaffirms* the unacceptability of the acquisition of territory by the use of force and the need to restore the full sovereignty, territorial integrity and political independence of Bosnia and Herzegovina;

4. *Decides* to ensure full respect for the safe areas referred to in resolution 824 (1993);

5. *Also decides* to extend to that end the mandate of the United Nations Protection Force in order to enable it, in the safe areas referred to in resolution 824 (1993), to deter attacks against the safe areas, to monitor the cease-fire, to promote the withdrawal of military or paramilitary units other than those of the Government of the Republic of Bosnia and Herzegovina and to occupy some key points on the ground, in addition to participating in the delivery of humanitarian relief to the population as provided for in resolution 776 (1992) of 14 September 1992;

6. *Affirms* that these safe areas are a temporary measure and that the primary objective remains to reverse the consequences of the use of force and to allow all persons displaced from their homes in Bosnia and Herzegovina to return to their homes in peace, beginning, *inter alia*, with the prompt implementation of the provisions of the Vance-Owen plan in areas where those have been agreed by the parties directly concerned;

7. *Requests* the Secretary-General, in consultation, *inter alia*, with the Governments of the Member States contributing forces to the Force:

(*a*) To make the adjustments or reinforcement of the Force which might be required by the implementation of the present resolution, and to consider assigning elements of the Force in support of the elements entrusted with protection of safe areas, with the agreement of the Governments contributing forces;

(*b*) To direct the Force Commander to redeploy to the extent possible the forces under his command in Bosnia and Herzegovina;

8. *Calls upon* Member States to contribute forces, including logistic support, to facilitate the implementation of the provisions regarding the safe areas, expresses its gratitude to Member States already providing forces for that purpose, and invites the Secretary-General to seek additional contingents from other Member States;

9. *Authorizes* the Force, in addition to the mandate defined in resolutions 770 (1992) of 13 August 1992 and 776 (1992), in carrying out the mandate defined in paragraph 5 above, acting in self-defence, to take the necessary measures, including the use of force, in reply to bombardments against the safe areas by any of the parties or to armed incursion into them or in the event of any deliberate obstruction in or around those areas to the freedom of movement of the Force or of protected humanitarian convoys;

10. *Decides* that, notwithstanding paragraph 1 of resolution 816 (1993), Member States, acting nationally or through regional organizations or arrangements, may take, under the authority of the Security Council and subject to close coordination with the Secretary-General and the Force, all necessary measures, through the use of air power, in and around the safe areas in Bosnia and Herzegovina, to support the Force in the performance of its mandate set out in paragraphs 5 and 9 above;

11. *Requests* the Member States concerned, the Secretary-General and the Force to coordinate closely on the measures they are taking to implement paragraph 10 above and to report to the Council through the Secretary-General;

12. *Invites* the Secretary-General to report to the Council, for decision, if possible within seven days of the adoption of the present resolution, on the modalities of its implementation, including its financial implications;

13. *Also invites* the Secretary-General to submit to the Council, not later than two months after the adoption of the present resolution, a report on the implementation of and compliance with the present resolution;

14. *Emphasizes* that it will keep open other options for new and tougher measures, none of which is prejudged or excluded from consideration;

15. *Decides* to remain actively seized of the matter, and undertakes to take prompt action, as required.

Adopted at the 3228th meeting by 13 vote to none, with 2 abstentions (Pakistan and Venezuela).

Decisions

At its 3234th meeting, on 10 June 1993, the Council decided to invite the representative of Bosnia and Herzegovina to participate, without vote, in the discussion of the item entitled "The situation in the Republic of Bosnia and Herzegovina".

Resolution 838 (1993)
of 10 June 1993

The Security Council,

Reaffirming its resolution 713 (1991) of 25 September 1991 and all subsequent relevant resolutions,

Reaffirming also the sovereignty, territorial integrity and political independence of the Republic of Bosnia and Herzegovina and the responsibility of the Security Council in this regard,

Reiterating the demands in its resolution 752 (1992) of 15 May 1992 and subsequent relevant resolutions that all forms of interference from outside Bosnia and Herzegovina cease immediately and that its neighbours take swift action to end all interference and respect its territorial integrity,

Recalling the demand in its resolution 819 (1993) of 16 April 1993 that the Federal Republic of Yugoslavia (Serbia and Montenegro) immediately cease the supply of military arms, equipment and services to Bosnian Serb paramilitary units,

Taking into account the report of the Secretary-General of 21 December 1992 on the possible deployment of observers on the borders of the Republic of Bosnia and Herzegovina,[47]

Expressing its condemnation of all activities carried out in violation of resolutions 757 (1992) of 30 May 1992, 787 (1992) of 16 November 1992 and 820 (1993) of 17 April 1993 between the territory of the

[47] *Official Records of the Security Council, Forty-seventh Year, Supplement for October, November and December 1992*, document S/25000.

Federal Republic of Yugoslavia (Serbia and Montenegro) and the United Nations Protected Areas in the Republic of Croatia and those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces,

Considering that, in order to facilitate the implementation of the relevant Security Council resolutions, observers should be deployed on the borders of the Republic of Bosnia and Herzegovina, as indicated in its resolution 787 (1992),

Noting the earlier preparedness of the authorities in the Federal Republic of Yugoslavia (Serbia and Montenegro) to stop all but humanitarian supplies to the Bosnian Serb party, and urging full implementation of that commitment,

Considering that all appropriate measures should be undertaken to achieve a peaceful settlement of the conflict in Bosnia and Herzegovina provided for in the Vance-Owen peace plan,

Bearing in mind paragraph 4 (*a*) of its resolution 757 (1992) concerning the prevention by all States of imports into their territories of all commodities and products originating in or exported from the Federal Republic of Yugoslavia (Serbia and Montenegro) and paragraph 12 of its resolution 820 (1993) concerning import to, export from and transshipment through those areas of Bosnia and Herzegovina under the control of Bosnian Serb forces,

1. *Requests* the Secretary-General to submit to the Council as soon as possible a further report on options for the deployment of international observers to monitor effectively the implementation of the relevant Council resolutions, to be drawn from the United Nations and, if appropriate, from Member States acting nationally or through regional organizations and arrangements, on the borders of the Republic of Bosnia and Herzegovina, giving priority to the border between the Republic of Bosnia and Herzegovina and the Federal Republic of Yugoslavia (Serbia and Montenegro) and taking into account developments since his report of 21 December 1992 as well as the differing circumstances affecting the various sectors of the borders and the need for appropriate coordination mechanisms;

2. *Invites* the Secretary-General to contact immediately Member States, nationally or through regional organizations or arrangements, to ensure the availability to him on a continuing basis of any relevant material derived from aerial surveillance and to report thereon to the Security Council;

3. *Decides* to remain seized of the matter.

Adopted unanimously at the 3234th meeting.

Decisions

At its 3241st meeting, on 18 June 1993, the Council decided to invite the representative of Bosnia and Herzegovina to participate, without vote, in the discussion of the item entitled "The situation in the Republic of Bosnia and Herzegovina: report of the Secretary-General pursuant to Security Council resolution 836 (1993) (S/25939 and Corr.1 and Add.1)".[17]

Resolution 844 (1993)
of 18 June 1993

The Security Council,

Reaffirming its resolution 713 (1991) of 25 September 1991 and all subsequent relevant resolutions,

Having considered the report of the Secretary-General of 14 and 17 June 1993[48] pursuant to paragraph 12 of resolution 836 (1993) concerning the safe areas in the Republic of Bosnia and Herzegovina,

Reiterating once again its alarm at the grave and intolerable situation in Bosnia and Herzegovina arising from serious violations of international humanitarian law,

Recalling the overwhelming importance of seeking a comprehensive political solution to the conflict in Bosnia and Herzegovina,

Determined to implement fully the provisions of resolution 836 (1993) of 4 June 1993,

Acting under Chapter VII of the Charter of the United Nations,

1. *Approves* the report of the Secretary-General;

2. *Decides* to authorize the reinforcement of the United Nations Protection Force to meet the additional force requirements mentioned in paragraph 6 of the report of the Secretary-General as an initial approach;

3. *Requests* the Secretary-General to continue the consultations, *inter alia*, with the Governments of the Member States contributing forces to the Force, called for in resolution 836 (1993);

4. *Reaffirms its decision* in paragraph 10 of resolution 836 (1993) on the use of air power in and around the safe areas to support the Force in the performance of its mandate, and encourages Member States, acting nationally or through regional organizations or arrangements, to coordinate closely with the Secretary-General in this regard;

5. *Calls upon* Member States to contribute forces, including logistic support and equipment, to facilitate the implementation of the provisions regarding the safe areas;

6. *Invites* the Secretary-General to report to the Council on a regular basis on the implementation of resolution 836 (1993) and the present resolution;

7. *Decides* to remain actively seized of the matter.

Adopted unanimously at the 3241st meeting.

Decisions

At its 3247th meeting, on 29 June 1993, the Council decided to invite the representatives of Afghanistan, Albania, Algeria, Bangladesh, Bosnia and Herzegovina, the Comoros, Costa Rica, Croatia, Egypt, Estonia, Indonesia, the Islamic Republic of Iran, Jordan, Latvia, the Libyan Arab Jamahiriya, Malaysia, Senegal, Slovenia, the Syrian Arab Republic, Tunisia, Turkey, Ukraine and the United Arab Emirates to participate, without vote, in the discussion of the item entitled "The situation in the Republic of Bosnia and Herzegovina".

At the same meeting, the Council decided to extend an invitation to Ambassador Dragomir Djokic, at his request, to address the Council in the course of the discussion of the item.

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[48] Ibid., *Forty-eighth Year, Supplement for April, May and June 1993*, documents S/25939 and Add.1.

Annex 60

UNGA, resolution 48/88, The situation in Bosnia and Herzegovina, UN doc. A/RES/48/88, 20 December 1993

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and participation for the economic and social advancement of all peoples, with particular reference to the economies of developing countries;

3. *Requests* the Secretary-General, in consultation with Member States, to appoint the members of the Panel from lists of experts within the United Nations system, in particular members of the Committee for Development Planning, taking into account the outcome of discussions on Economic and Social Council resolution 1993/81 of 30 July 1993 and the relevant provisions of General Assembly resolution 47/191 of 22 December 1992, so that they will commence their study as early as possible in 1994 in order to prepare a comprehensive, systematic and thorough report, including appropriate conclusions and practical recommendations, guided by the consensus and principles on international cooperation for development as enshrined in various agreements and declarations referred to in the preamble of the present resolution, and based on their own independent judgement, in time for consideration by the General Assembly at its fiftieth session in 1995;

4. *Invites* Member States and international organizations to contribute on a voluntary basis towards implementation of the present resolution;

5. *Invites* the United Nations Panel on Opportunity and Participation, in the preparation of the above-mentioned study, to draw, *inter alia*, on the ongoing discussions in the context of the preparation of an agenda for development;

6. *Requests* the Secretary-General to submit to the General Assembly at its forty-ninth session a progress report on the work of the Panel;

7. *Decides* to include in the provisional agenda of its forty-ninth session a sub-item entitled "United Nations initiative on opportunity and participation" under the item entitled "Development and international economic cooperation".

79th plenary meeting
14 December 1993

48/88. The situation in Bosnia and Herzegovina

The General Assembly,

Reaffirming its resolutions 46/242 of 25 August 1992 and 47/121 of 18 December 1992 and all relevant resolutions of the Security Council regarding the situation in the Republic of Bosnia and Herzegovina,

Reaffirming once again that, as the Republic of Bosnia and Herzegovina is a sovereign, independent State and a Member of the United Nations, it is entitled to all rights provided for in the Charter of the United Nations, including the right to self-defence under Article 51 thereof,

Gravely concerned that the unprovoked armed hostilities and aggression continue against Bosnia and Herzegovina and that the relevant resolutions of the Security Council remain unimplemented,

Recalling the report of the Committee on the Elimination of Racial Discrimination,[99] in which the Committee "noted with great concern that links existed between the Federal Republic of Yugoslavia (Serbia and Montenegro) and Serbian militias and paramilitary groups responsible for massive, gross and systematic violations of human rights in Bosnia and Herzegovina and in Croatian territories controlled by Serbs",[100]

Condemning the continuing hostilities by the Bosnian Serbs, particularly their abhorrent policy of "ethnic cleansing",

Alarmed at extremist Bosnian Croat military elements for their aggressive acts against Bosnia and Herzegovina,

Alarmed also at the collusion between Serbian forces and extremist Bosnian Croat elements and others to seek the dismemberment of the Republic of Bosnia and Herzegovina, in clear violation of the principles of the Charter of the United Nations and in total disregard of the relevant resolutions of the General Assembly and those of the Security Council,

Deploring the non-compliance with the relevant Security Council resolutions, especially by the Bosnian Serb party,

Recalling the principles enunciated in its resolutions and the relevant resolutions of the Security Council, as well as those adopted by the International Conference on the Former Yugoslavia,

Reaffirming its determination to have the Republic of Bosnia and Herzegovina maintain its independence, unity and territorial integrity, and noting, in accordance with Article 24 of the Charter, the responsibility of the Security Council in that regard,

Also reaffirming its determination to prevent acts of genocide and crimes against humanity,

Reaffirming once again its total and complete rejection of the acquisition of territory through the use of force and the abhorrent practice of "ethnic cleansing",

Stressing that the continuation of aggression in Bosnia and Herzegovina is a serious impediment to the peace process,

Bearing in mind the obligation of all States to act in conformity with the principles and purposes of the Charter,

Stressing also that the full implementation of Security Council resolutions concerning the United Nations Protected Areas in the territory of the Republic of Croatia is of significant importance for the security, territorial integrity and stability of the Republic of Bosnia and Herzegovina,

Noting that the International Court of Justice, in its Order of 13 September 1993 in the case concerning application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)), indicated as a provisional measure that "the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) should immediately, in pursuance of its undertaking in the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, take all measures within its power to prevent commission of the crime of genocide",[101]

Taking note of the Order of the International Court of Justice of 13 September 1993, in which it stated that "the present perilous situation demands ... [the] immediate and effective implementation of those [provisional] measures",[102]

Commending the work of the Commission of Experts established pursuant to Security Council resolution 780 (1992) of 6 October 1992, and noting with interest the first and second interim reports of the Commission,[103]

Expressing its concern about the continuing siege of Sarajevo and other Bosnian cities and of "safe areas", which endangers the well-being and safety of their inhabitants,

Aware, in the context of the character of Sarajevo as a multicultural, multi-ethnic and multireligious centre, of the need to preserve its plurality and avoid its further destruction,

Conscious that the grave situation in Bosnia and Herzegovina continues to be a threat to international peace and security,

1. *Reaffirms* the principles enunciated in its resolutions and the relevant resolutions of the Security Council and those adopted by the International Conference on the Former Yugoslavia pertaining to the Republic of Bosnia and Herzegovina;

2. *Demands* that all parties implement immediately, and scrupulously maintain in good faith, a cease-fire and agree to cease all hostilities throughout Bosnia and Herzegovina, in order to create an atmosphere conducive to the resumption of peace negotiations within the framework of the International Conference on the Former Yugoslavia;

3. *Reaffirms* that the consequences of "ethnic cleansing" will not be accepted by the international community and that those who have seized land by "ethnic cleansing" and by the use of force must relinquish those lands, in conformity with norms of international law;

4. *Condemns* the continued violation of the international border between the Republic of Bosnia and Herzegovina and the Republic of Croatia by Serbian forces, and thereby requests the Security Council to take all necessary measures in implementation of its resolution 769 (1992) of 7 August 1992;

5. *Requests* the Security Council to follow and immediately implement its resolution 838 (1993) of 10 June 1993 to ensure that the Federal Republic of Yugoslavia (Serbia and Montenegro) immediately ceases the supply of military arms, equipment and services to Bosnian Serb paramilitary units, as demanded in its resolution 819 (1993) of 16 April 1993;

6. *Demands* that the Bosnian Serb party lift forthwith the siege of Sarajevo and other "safe areas", as well as other besieged Bosnian towns, and urges the Secretary-General to direct the United Nations Protection Force to take necessary measures, in accordance with relevant Security Council resolutions, for the protection of the "safe areas";

7. *Also demands* that, as a means of bringing about the cessation of hostilities and to facilitate delivery of humanitarian assistance, in accordance with paragraphs 5 and 9 of Security Council resolution 836 (1993) of 4 June 1993, the Bosnian Serb party withdraw all its heavy weaponry and forces to areas outside the city of Sarajevo and other "safe areas" to a distance where they cease to constitute a menace to their security and that of their inhabitants and where they are to be monitored by United Nations military observers, and urges all parties to agree to implement further confidence-building measures;

8. *Reaffirms once again* the right of all refugees and displaced persons to return voluntarily to their homes in safety and dignity;

9. *Commends* the ongoing efforts of the Office of the United Nations High Commissioner for Refugees, the United Nations Protection Force and other international humanitarian agencies, and notes with the utmost appreciation those individuals who have shown exemplary bravery and courage and those who have made the ultimate sacrifice in carrying out their duties;

10. *Urges* the Office of the United Nations High Commissioner for Refugees, as part of its humanitarian assistance programme, to provide appropriate assistance to facilitate cultural exchanges between Sarajevo and the international community and to facilitate the delivery and installation of a reliable communication system in Sarajevo for the use of the civilian population;

11. *Urges* the Secretary-General to take immediate action to reopen the Tuzla airport in order to facilitate the receipt and distribution of international humanitarian aid, consistent with the provisions of Security Council resolution 770 (1992) of 13 August 1992;

12. *Demands* that all concerned facilitate the unhindered flow of humanitarian assistance, including the provision of water, electricity, fuel and communication, in particular to the "safe areas" in Bosnia and Herzegovina, and in this context urges the Security Council to implement fully its resolution 770 (1992) to ensure the free flow of humanitarian assistance, particularly, to the "safe areas";

13. *Commends* all States, and in particular the States bordering on the Federal Republic of Yugoslavia (Serbia and Montenegro) and the other Danube riparian States, for the measures they have taken to comply with the mandatory sanctions imposed by the Security Council against the Federal Republic of Yugoslavia (Serbia and Montenegro), and urges all States to continue their vigilant enforcement of those sanctions measures;

14. *Condemns vigorously* the violations of the human rights of the Bosnian people and of international humanitarian law committed by parties to the conflict, especially those violations committed as policy, flagrantly and on a massive scale, by the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Bosnian Serbs;

15. *Urges* the Security Council, in fulfilling its responsibility under Article 24 of the Charter of the United Nations, to take all appropriate steps to uphold and restore fully the sovereignty, political independence, territorial integrity and unity of the Republic of Bosnia and Herzegovina, in cooperation with States Members of the United Nations and the Government of the Republic;

16. *Deeply alarmed* by the continuing systematic abuses committed against Albanians, Bosnians, Hungarians and Croatians, and others in Kosovo, Sandzak and Vojvodina, respectively, by the authorities of Serbia and Montenegro, and in that regard condemns the decision of those authorities not to renew the mandate of the monitoring missions of the Conference on Security and Cooperation in Europe in those regions;

17. *Also urges* the Security Council to give all due consideration, on an urgent basis, to exempt Bosnia and Herzegovina from the arms embargo as imposed on the former Yugoslavia under Security Council resolution 713 (1991) of 25 September 1991;

18. *Urges* Member States, as well as other members of the international community, from all regions to extend their cooperation to the Republic of Bosnia and Herzegovina in exercise of its inherent right of individual and collective self-defence in accordance with Article 51 of Chapter VII of the Charter;

19. *Reaffirms* its resolution 47/1 of 22 September 1992, and urges Member States and the Secretariat in fulfilling the spirit of that resolution to end the de facto working status of the Federal Republic of Yugoslavia (Serbia and Montenegro);

20. *Requests* that the International Committee of the Red Cross be granted free access to all detention camps established by the Serbs in Serbia and Montenegro and in Bosnia and Herzegovina and to all persons imprisoned in those camps, and that all prisoners be notified of this action without delay;

21. *Requests* the Security Council to act immediately to close all detention camps in Bosnia and Herzegovina and further to close concentration camps established by the Serbs in Serbia and Montenegro and in Bosnia and Herzegovina and, until implementation, to assign international observers to those camps;

22. *Expresses its appreciation* to those States and international institutions which have provided humanitarian assistance to the people of Bosnia and Herzegovina, and appeals to all Member States to contribute generously towards alleviating their sufferings, including assistance to refugee centres for Bosnian refugees in other countries;

23. *Further affirms* individual responsibility for the perpetration of crimes against humanity committed in Bosnia and Herzegovina;

24. *Welcomes* the establishment of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, constituted pursuant to Security Council resolution 827 (1993) of 25 May 1993, and encourages the provision of all resources necessary, including voluntary contributions from States and intergovernmental and non-governmental organizations, so that it can conduct its stipulated functions of trying and punishing those responsible for the perpetration of violations of international law;

25. *Encourages* the Commission of Experts established pursuant to Security Council resolution 780 (1992), subject to the provisions of Council resolution 827 (1993) and in cooperation with the Prosecutor of the International Tribunal, to facilitate the work of the International Tribunal, including the establishment of a record of violations such as "ethnic cleansing" and systematic rape;

26. *Requests* the Secretary-General to provide the necessary resources and support for the Commission to carry out its functions;

27. *Calls upon* the Security Council to ensure that the proposals contained in the "Geneva peace package"[104] are in conformity with the Charter of the United Nations, the principles of international law, previous resolutions of the General Assembly and those adopted by the Security Council, and the principles adopted at the International Conference on the Former Yugoslavia;

28. *Calls* for the urgent reconvening of the International Conference on the Former Yugoslavia in order to arrive at just and equitable proposals for lasting peace in Bosnia and Herzegovina, and calls upon the parties to the conflict to show good faith as they continue to negotiate in order to reach a just, equitable and durable solution;

29. *Requests* the Secretary-General to submit a report on the implementation of the present resolution within 15 days of its adoption, as well as the report called for under the auspices of the London Conference, which, regrettably, has not yet been issued;

30. *Decides* to remain seized of the matter and to continue the consideration of this item.

84th plenary meeting
20 December 1993

48/158. Question of Palestine

A

COMMITTEE ON THE EXERCISE OF THE INALIENABLE RIGHTS OF THE PALESTINIAN PEOPLE

The General Assembly,

Recalling its resolutions 181 (II) of 29 November 1947, 194 (III) of 11 December 1948, 3236 (XXIX) of 22 November 1974, 3375 (XXX) and 3376 (XXX) of 10 November 1975, 31/20 of 24 November 1976, 32/40 A of 2 December 1977, 33/28 A and B of 7 December 1978, 34/65 A of 29 November 1979 and 34/65 C of 12 December 1979, ES-7/2 of 29 July 1980, 35/169 A and C of 15 December 1980, 36/120 A and C of 10 December 1981, ES-7/4 of 28 April 1982, 37/86 A of 10 December 1982, 38/58 A of 13 December 1983, 39/49 A of 11 December 1984, 40/96 A of 12 December 1985, 41/43 A of 2 December 1986, 42/66 A of 2 December 1987, 43/175 A of 15 December 1988, 44/41 A of 6 December 1989, 45/67 A of 6 December 1990, 46/74 A of 11 December 1991 and 47/64 A of 11 December 1992,

Having considered the report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People,[105]

Welcoming the signing of the Declaration of Principles on Interim Self-Government Arrangements, including its Annexes and Agreed Minutes, by the Government of the State of Israel and the Palestine Liberation Organization on 13 September 1993 in Washington, D.C.,[89]

Reaffirming that the United Nations has a permanent responsibility with respect to the question of Palestine until the question is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy,

Annex 61

UNSC, resolution 1004 (1995), UN doc. S/RES/1004 (1995), 22 July 1995

Available at:

http://undocs.org/S/RES/1004(1995)

French version available at:

http://undocs.org/fr/S/RES/1004(1995)

UNITED NATIONS

S

Security Council

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S/RES/1004 (1995)
12 July 1995

RESOLUTION 1004 (1995)

Adopted by the Security Council at its 3553rd meeting, on 12 July 1995

The Security Council,

Recalling all its earlier relevant resolutions,

Reaffirming its commitment to the sovereignty, territorial integrity and political independence of the Republic of Bosnia and Herzegovina,

Gravely concerned at the deterioration in the situation in and around the safe area of Srebrenica, Republic of Bosnia and Herzegovina, and at the plight of the civilian population there,

Gravely concerned also at the very serious situation which confronts personnel of the United Nations Protection Force (UNPROFOR) and a great number of displaced persons within the safe area at Potocari, especially the lack of essential food supplies and medical care,

Paying tribute to the personnel of UNPROFOR deployed in the safe area of Srebrenica,

Condemning the offensive by the Bosnian Serb forces against the safe area of Srebrenica, and in particular the detention by the Bosnian Serb forces of UNPROFOR personnel,

Condemning also all attacks on UNPROFOR personnel,

Recalling the Agreement for the demilitarization of Srebrenica of 18 April 1993 (S/25700, annex) by the Government of the Republic of Bosnia and Herzegovina and the Bosnian Serb party, and regretting that it has not been implemented in full by either party,

Stressing the importance of renewed efforts to achieve an overall peaceful settlement, and the unacceptability of any attempt to resolve the conflict in the Republic of Bosnia and Herzegovina by military means,

Acting under Chapter VII of the Charter of the United Nations,

1. Demands that the Bosnian Serb forces cease their offensive and withdraw from the safe area of Srebrenica immediately;

2. Demands also that the parties respect fully the status of the safe area of Srebrenica in accordance with the Agreement of 18 April 1993;

3. Demands further that the parties respect fully the safety of UNPROFOR personnel and ensure their complete freedom of movement, including resupply;

4. Demands that the Bosnian Serb forces immediately and unconditionally release unharmed all detained UNPROFOR personnel;

5. Demands that all parties allow unimpeded access for the United Nations High Commissioner for Refugees and other international humanitarian agencies to the safe area of Srebrenica in order to alleviate the plight of the civilian population, and in particular that they cooperate on the restoration of utilities;

6. Requests the Secretary-General to use all resources available to him to restore the status as defined by the Agreement of 18 April 1993 of the safe area of Srebrenica in accordance with the mandate of UNPROFOR, and calls on the parties to cooperate to that end;

7. Decides to remain actively seized of the matter.

Annex 62

UNGA, resolution 50/193, Situation of human rights in the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), UN doc. A/RES/50/193, 22 December 1995

Alternative format available at:

http://undocs.org/A/RES/50/193

French version available at:

http://undocs.org/fr/A/RES/50/193

to pay particular attention to the use of rape as a weapon of war, particularly in the Republic of Bosnia and Herzegovina;

12. *Requests* the Secretary-General to submit a report, as appropriate, to the General Assembly at its fifty-first session on the implementation of the present resolution;

13. *Decides* to continue its consideration of this question at its fifty-first session.

99th plenary meeting
22 December 1995

50/193. Situation of human rights in the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro)

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights,[5] the International Covenants on Human Rights,[22] the International Convention on the Elimination of All Forms of Racial Discrimination,[6] the Convention on the Rights of the Child,[50] the Convention on the Prevention and Punishment of the Crime of Genocide,[199] the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[135] the Convention on the Elimination of All Forms of Discrimination against Women[49] and other instruments of international humanitarian law, including the Geneva Conventions of 12 August 1949[107] for the protection of victims of war and the Additional Protocols thereto, of 1977,[108] as well as the principles and commitments undertaken by States members of the Organization for Security and Cooperation in Europe,

Reaffirming that all Member States have an obligation to promote and protect human rights and fundamental freedoms and to fulfil the obligations they have under the human rights instruments to which they are party, and reaffirming also the obligation of all to respect international humanitarian law,

Welcoming the General Framework Agreement for Peace in Bosnia and Herzegovina[200] initialled by the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), representing also the Bosnian Serb party, at Dayton, Ohio, on 21 November 1995 which commits the parties to the conflict to ending the war and starting to build peace with justice; enables Bosnia and Herzegovina to continue its legal existence as a single State within its internationally recognized borders with full respect for its sovereignty, territorial integrity and political independence by its neighbours; and commits the parties in Bosnia and Herzegovina to respect fully human rights,

Welcoming also the basic agreement on the region of Eastern Slavonia, Baranja and Western Sirmium,[209] signed on 12 November 1995 by the Government of the Republic of Croatia and the local Serb representatives,

None the less gravely concerned at the human tragedy that has occurred in the territories of the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) and at the massive and systematic violations of human rights and international humanitarian law,

Recalling its resolution 49/196 of 23 December 1994, Commission on Human Rights resolution 1995/89 of 8 March 1995[38] and all relevant resolutions of the Security Council,

Recalling specifically the Security Council resolutions in which the Council demanded, *inter alia*, that all parties and others concerned in the former Yugoslavia immediately cease and desist from all breaches of international humanitarian law, requested the Secretary-General to establish a commission of experts to examine and analyse information relating to serious violations of such law being committed in the territory of the former Yugoslavia, established an international tribunal for the prosecution of persons responsible for such violations and condemned in particular the unacceptable practice of ethnic cleansing perpetrated in areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces,

Recalling also additional Security Council resolutions, in particular resolutions 824 (1993) of 6 May 1993 and 836 (1993) of 4 June 1993, in which the Council declared that Sarajevo, Tuzla, Žepa, Goražde, Bihać, Srebrenica and their surroundings should be treated as safe areas, that international humanitarian agencies should be given free and unimpeded access to those areas and that there should be freedom of movement for the civilian population and humanitarian goods to, from and within the areas,

Recalling further Security Council resolution 1019 (1995) of 9 November 1995, in which the Council demanded that the Bosnian Serb party give immediate and unimpeded access to representatives of the United Nations High Commissioner for Refugees, the International Committee of the Red Cross and other international agencies to persons displaced and to persons detained or reported missing from Srebrenica, Žepa and the regions of Banja Luka and Sanski Most,

Gravely concerned at attacks and capture by the Bosnian Serbs and Croatian Serb forces of safe areas, in violation of the relevant Security Council resolutions,

Recalling Security Council resolution 1009 (1995) of 10 August 1995, in which the Council demanded that the Government of the Republic of Croatia respect fully the rights of the local Serb population, including their rights to remain, leave or return in safety, allow access to this population by international humanitarian organizations and create conditions conducive to the return of those persons who have left their homes,

Noting with appreciation the efforts of the United Nations Peace Forces to help to create the conditions for the peaceful settlement of the conflicts in the Republic of Bosnia and Herzegovina and the Republic of Croatia and to provide protection for the delivery of humanitarian aid and the protection of human rights, and also noting the obstacles faced by those forces in the performance of their mandates,

Acknowledging the progress made by the Bosnian Federation as a model for ethnic reconciliation in the region,

Encouraging the international community, acting through the United Nations and other international organizations as well as bilaterally, to enhance significantly humanitarian support for the people of the region and to promote human rights, economic reconstruction, the repat-

[209] See A/50/757-S/1995/951; see *Official Records of the Security Council, Fiftieth Year, Supplement for October, November and December 1995*, document S/1995/951.

riation of refugees and the holding of free elections in the Republic of Bosnia and Herzegovina,

Welcoming the efforts of the European Union to promote respect for human rights and fundamental freedoms, and endorsing the recommendation of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the territory of the former Yugoslavia that economic and other aid must be made conditional upon meaningful progress in human rights,

Gravely concerned at the human rights violations in the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), in particular at those committed in the context of the odious practice of ethnic cleansing, which has been the direct cause of the vast majority of human rights violations there and whose principal victims have been the Muslim population, as well as the Croats and others,

Also gravely concerned at reports, including by the Special Representative of the Secretary-General, of grave violations of international humanitarian law and of human rights in and around Srebrenica, and in the areas of Banja Luka and Sanski Most, including reports of mass murder, unlawful detention and forced labour, rape and deportation of civilians,

Dismayed by the huge number of missing persons still unaccounted for, particularly in Bosnia and Herzegovina and in Croatia,

Deeply concerned by the situations reflected in the report of the Secretary-General on rape and abuse of women in the areas of armed conflict in the former Yugoslavia,[208] and stressing the need for detailed reporting on this subject,

Alarmed that the conflict in the Republic of Bosnia and Herzegovina and in the Republic of Croatia has also been characterized by the systematic destruction and profanation of mosques, churches and other places of worship, religious buildings and sites of cultural heritage,

Expressing its particular concern for the situation of the children and the elderly as well as other vulnerable groups in the area,

Calling attention to the reports and recommendations of the Special Rapporteur on the situation of human rights in the territories of the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), including the most recent report[210] by the newly appointed Special Rapporteur, Mrs. Elisabeth Rehn,

Expressing its deep appreciation for the activity and efforts of the previous Special Rapporteur, Mr. Tadeusz Mazowiecki, in the discharge of his mandate,

Noting the recommendations of the Special Rapporteur that respect for human rights should be given priority during and after the peace negotiations and that, without genuine improvements in the human rights situation in the area, any peace agreement will not have a solid foundation,

1. *Commends* both the former and the current Special Rapporteurs of the Commission on Human Rights on the situation of human rights in the territory of the former Yugoslavia for their efforts, and notes that the presence of the Special Rapporteur can be a positive factor towards reducing the instances of all human rights violations in the region;

2. *Expresses its outrage* at the instances of massive and systematic violations of human rights and humanitarian law as described in the reports of the Special Rapporteur, including ethnic cleansing, killings, disappearances, torture, rape, detentions, beatings, arbitrary searches, destruction of houses, illegal evictions and other acts of violence aimed at forcing individuals from their homes;

3. *Condemns in the strongest terms* all violations of human rights and international humanitarian law by the parties to the conflict, recognizing that the leadership in territories under the control of Serbs in the Republic of Bosnia and Herzegovina and formerly Serb-held areas of the Republic of Croatia, the commanders of Serb paramilitary forces and political and military leaders in the Federal Republic of Yugoslavia (Serbia and Montenegro) bear primary responsibility for most of those violations and that persons who commit such acts will be held personally responsible and accountable;

4. *Condemns* the attacks on the safe areas of Srebrenica and Žepa by Bosnian Serb forces, which led to gross abuses of human rights and grave breaches of international humanitarian law and the disappearance of thousands of persons, as detailed in the reports of the former and the current Special Rapporteurs;

5. *Also condemns* the indiscriminate shelling of civilians in the safe areas of Sarajevo, Tuzla, Bihać and Goradže and the use of cluster bombs on civilian targets by Bosnian Serb and Croatian Serb forces;

6. *Further condemns* violations of human rights and international humanitarian law, including killings, the burning and looting of houses, the shelling of residential areas, harassment of and attacks on refugees, the elderly and the infirm perpetrated by members of the Croatian armed forces and civilians in the formerly Serb-controlled regions of Croatia during and subsequent to the military operations there in August 1995;

7. *Welcomes* the withdrawal of the heavy weapons surrounding Sarajevo following the decision to implement Security Council resolution 836 (1993), reinforced by the London conference of 21 July 1995, to respond to attacks on safe areas, and notes that this opened Sarajevo to badly needed humanitarian relief;

8. *Notes with appreciation* the efforts of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, established pursuant to Security Council resolutions 806 (1993) of 5 February 1993 and 827 (1993) of 25 May 1993, notes the issuance of indictments against individuals, and urges that the Tribunal be given the resources it needs;

9. *Requests* States, as a matter of urgency, to continue to make available to the International Tribunal expert personnel, adequate resources and services to aid in the investigation and prosecution of persons accused of having committed serious violations of international humanitarian law;

10. *Reminds* all States of their obligation under Security Council resolution 827 (1993) to cooperate with the International Tribunal, including through compliance with requests for assistance and orders issued by a trial chamber of the Tribunal, and, in this regard, urges the parties to allow the establishment of offices of the Tribunal in their

[210] See A/50/727-S/1995/933; see *Official Records of the Security Council, Fiftieth Year, Supplement for October, November and December 1995*, document S/1995/933.

territories and draws the attention of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Croatia and the Republic of Bosnia and Herzegovina to their obligation to cooperate with the Tribunal, in particular to arrest, detain and facilitate the transfer to the custody of the Tribunal any and all indicted war criminals who reside in or transit through or are otherwise present in their respective territories;

11. *Demands* that all parties refrain from any action intended to destroy, alter, conceal or damage any evidence of violations of human rights and international humanitarian law and that they preserve such evidence;

12. *Expresses its complete support* for the victims of violations of human rights and international humanitarian law, recognizes the right of refugees and displaced persons freely to return to their homes of origin in safety and dignity, to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any such property that cannot be restored to them, considers null any commitments made under duress, and urges all parties to fulfil their agreements to this end;

13. *Condemns* all deliberate obstruction of the delivery of food and medical and other supplies essential for the civilian population, which constitutes a serious violation of international humanitarian law and international human rights law, and of medical evacuations, and demands that all parties ensure that all persons under their control cease such acts;

14. *Also condemns* all attacks on the United Nations Peace Forces and on personnel working with the Office of the United Nations High Commissioner for Refugees and other humanitarian organizations by parties to the conflict;

15. *Expresses its outrage* that the systematic practice of rape has been used as a weapon of war against women and children and as an instrument of ethnic cleansing, and recognizes that rape in this context constitutes a war crime;

16. *Condemns* police violence against the non-Serb populations in Kosovo, the Sandjak, Vojvodina and other areas of the Federal Republic of Yugoslavia (Serbia and Montenegro), particularly the systematic acts of harassment, beatings, torture, warrantless searches, arbitrary detention and unfair trials, including those directed mainly against members of the Muslim population;

17. *Strongly urges* the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro) to take appropriate measures to respect fully all human rights and fundamental freedoms and to take urgent action to ensure the rule of law in order to prevent arbitrary evictions and dismissals and discrimination against any ethnic or national, religious and linguistic group, including in the fields of education and information;

18. *Cautions* against any attempts to use Serb refugees to alter the population balance in Kosovo, the Sandjak, Vojvodina and any other part of the country, thus further suppressing the enjoyment of human rights in those areas;

19. *Strongly encourages* all parties to fulfil the commitments made at Dayton, Ohio, to release without delay all civilians and combatants held in prison or detention in relation to the conflict, in conformity with international humanitarian law and the provisions of the General Framework Agreement for Peace in Bosnia and Herzegovina,[200] and demands that the parties cooperate fully with the International Committee of the Red Cross, the Special Rapporteur and her staff, the United Nations High Commissioner for Refugees, the United Nations High Commissioner for Human Rights and the monitoring and other missions of the European Union and the Organization for Security and Cooperation in Europe;

20. *Urges* Member States to consider positively the Special Rapporteur's recommendation that economic and other aid must be made conditional upon meaningful progress in human rights;

21. *Recognizes* that the Bosnian Federation should be further developed to serve as a model for ethnic reconciliation in the region;

22. *Urges* all parties, in particular the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), to cooperate with the "special process" dealing with the problem of missing persons in the territory of the former Yugoslavia established pursuant to paragraph 24 of Commission on Human Rights resolution 1994/72 of 9 March 1994,[37] and reiterated in its resolution 1995/35 of 3 March 1995,[38] by disclosing information and documentation on inmates in prisons, camps and other places of detention;

23. *Also urges* all parties to provide full access for monitoring the human rights situation, including by allowing access to the missions of the Organization for Security and Cooperation in Europe, including in Kosovo, as called for by the General Assembly in resolution 49/196 and by the Security Council in resolution 855 (1993) of 9 August 1993, and in the Sandjak, Vojvodina and other affected areas, and requests that the Federal Republic of Yugoslavia (Serbia and Montenegro) permit the opening of a field office of the Centre for Human Rights of the Secretariat as called for by the General Assembly in resolution 49/196;

24. *Urges* the Secretary-General to take all necessary steps to ensure the full and effective coordination of the activities of all United Nations bodies in implementing the present resolution, and urges those bodies concerned with the situation in the territories of Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) to coordinate closely with the United Nations High Commissioner for Human Rights, the Special Rapporteur and the International Tribunal, and to provide to the Special Rapporteur on a continuing basis all relevant and accurate information in their possession on the situation of human rights in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro);

25. *Draws attention* to the need for an immediate and urgent investigation by qualified experts of several mass grave sites near Srebrenica and Vukovar and other mass grave sites and places where mass killings are reported to have taken place, and requests the Secretary-General, within existing resources, to make available the necessary means for this undertaking;

26. *Also urges* the Secretary-General, within existing resources, to make all necessary resources available for the Special Rapporteur to carry out her mandate and in particular to provide her with adequate staff based in the territories of Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) to ensure effective continuous monitoring of the human rights situation there and coordination with other United Nations bodies involved, including the United Nations Peace Forces;

27. *Welcomes* the effort by the Government of Bosnia

and Herzegovina to uphold human rights in its territory, and urges it to fulfil the human rights commitments it has made;

28. *Notes with concern* that many of the past recommendations of the Special Rapporteur have not been fully implemented, in some cases because of resistance by the parties on the ground, and urges the parties, all States and relevant organizations to give immediate consideration to them, in particular the calls of the former and the current Special Rapporteurs:

(*a*) For the de facto Bosnian Serb authorities to provide prompt access for humanitarian monitors to territories controlled by them, in particular to the Banja Luka region and to Srebrenica, emphasizing that the fate of thousands of missing persons from Srebrenica requires immediate clarification;

(*b*) For the Government of Croatia to fulfil its responsibilities to secure the human rights of the remaining ethnic Serb population in all recently retaken territories and to remove all legal and administrative hurdles which are preventing the return of refugees and displaced persons;

(*c*) For greater cooperation between Governments and non-governmental organizations, recognizing that the work and role of non-governmental organizations is vital to the promotion and protection of the rights of the individual and respect and protection of human rights in the region;

(*d*) For the Federal Republic of Yugoslavia (Serbia and Montenegro) to undertake measures to respect fully the rights of persons belonging to national or ethnic, religious and linguistic minorities;

29. *Invites* the Commission on Human Rights, at its fifty-second session, to request the Special Rapporteur to report to the General Assembly at its fifty-first session;

30. *Decides* to continue its examination of this question at its fifty-first session under the item entitled "Human rights questions".

99th plenary meeting
22 December 1995

50/194. Situation of human rights in Myanmar

The General Assembly,

Reaffirming that all Member States have an obligation to promote and protect human rights and fundamental freedoms as stated in the Charter of the United Nations and elaborated in the Universal Declaration of Human Rights,[5] the International Covenants on Human Rights[22] and other applicable human rights instruments,

Aware that, in accordance with the Charter, the Organization promotes and encourages respect for human rights and fundamental freedoms for all and that the Universal Declaration of Human Rights states that the will of the people shall be the basis of the authority of government,

Recalling its resolution 49/197 of 23 December 1994,

Recalling also Commission on Human Rights resolution 1992/58 of 3 March 1992,[35] in which the Commission, *inter alia*, decided to nominate a special rapporteur to establish direct contacts with the Government and with the people of Myanmar, including political leaders deprived of their liberty, their families and their lawyers, with a view to examining the situation of human rights in Myanmar and following any progress made towards the transfer of power to a civilian Government and the drafting of a new constitution, the lifting of restrictions on personal freedoms and the restoration of human rights in Myanmar,

Taking note of Commission on Human Rights resolution 1995/72 of 8 March 1995,[38] in which the Commission decided to extend for one year the mandate of the Special Rapporteur on the situation of human rights in Myanmar,

Gravely concerned that the Government of Myanmar still has not implemented its commitment to take all necessary steps towards democracy in the light of the results of the elections held in 1990,

Noting the recent developments regarding the composition of the National Convention,

Welcoming the release without conditions, on 10 July 1995, of Nobel Peace Prize Laureate Aung San Suu Kyi and a number of other political prisoners, as called for by the General Assembly,

Also gravely concerned, however, at the continued violations of human rights in Myanmar, as reported by the Special Rapporteur, including killings of civilians, arbitrary arrest and detention, restrictions on freedom of expression and association, torture, forced labour, forced portering, human rights abuses in border areas in the course of military operations, forced relocations and development projects, abuse of women and the imposition of oppressive measures directed in particular at ethnic and religious minorities,

Welcoming the continuing cooperation between the Government of Myanmar and the Office of the United Nations High Commissioner for Refugees on the voluntary repatriation of refugees from Bangladesh to Myanmar,

Noting, however, that the human rights situation in Myanmar has resulted in flows of refugees to neighbouring countries, thus creating problems for the countries concerned,

1. *Expresses its appreciation* to the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar for his interim report;[211]

2. *Also expresses its appreciation* to the Secretary-General for his report;[212]

3. *Deplores* the continued violations of human rights in Myanmar;

4. *Welcomes* the release without conditions of Nobel Peace Prize Laureate Aung San Suu Kyi and other prominent political leaders;

5. *Strongly urges* the Government of Myanmar to release immediately and unconditionally detained political leaders and all political prisoners, to ensure their physical integrity and to permit them to participate in the process of national reconciliation;

6. *Urges* the Government of Myanmar to engage, at the earliest possible date, in a substantive political dialogue with Aung San Suu Kyi and other political leaders, including representatives of ethnic groups, as the best means of promoting national reconciliation and the full and early restoration of democracy;

7. *Welcomes* the discussions between the Government of Myanmar and the Secretary-General, and further encourages the Government of Myanmar to cooperate fully with the Secretary-General;

8. *Again urges* the Government of Myanmar, in conformity with its assurances given at various times, to take

[211] See A/50/568.
[212] A/50/782.

Annex 63

UNSG, Summary Statement by the Secretary-General on matters of which the Security Council is seized and on the stage reached in their consideration, UN doc. S/1998/44/Add.28, 24 July 1998

Available at:

http://undocs.org/S/1998/44/Add.28

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http://undocs.org/fr/S/1998/44/Add.28

UNITED NATIONS S

Security Council

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S/1998/44/Add.28
24 July 1998

ORIGINAL: ENGLISH

SUMMARY STATEMENT BY THE SECRETARY-GENERAL ON MATTERS OF WHICH THE SECURITY COUNCIL IS SEIZED AND ON THE STAGE REACHED IN THEIR CONSIDERATION

Addendum

Pursuant to rule 11 of the provisional rules of procedure of the Security Council, the Secretary-General is submitting the following summary statement.

The list of items of which the Security Council is seized is contained in documents S/1998/44 of 9 January 1998, S/1998/44/Add.13 of 9 April 1998, S/1998/44/Add.16 of 1 May 1998, S/1998/44/Add.19 of 22 May 1998, S/1998/44/Add.25 of 2 July 1998 and S/1998/44/Add.26 of 10 July 1998.

During the week ending 18 July 1998, the Security Council took action on the following items:

The situation in Sierra Leone (see S/1995/40/Add.47; S/1996/15/Add.6, 11 and 48; S/1997/40/Add.21, 27, 31, 40 and 45; and S/1998/44/Add.8, 11, 15, 20 and 22)

The Security Council resumed its consideration of the item at its 3902nd meeting, held on 13 July 1998, in accordance with the understanding reached in its prior consultations, having before it the fifth report of the Secretary-General on the situation in Sierra Leone (S/1998/486 and Add.1).

The President, with the consent of the Council, invited the representatives of Austria, Nigeria and Sierra Leone, at their request, to participate in the discussion without the right to vote.

The President drew attention to the text of a draft resolution (S/1998/620) which had been prepared in the course of the Council's prior consultations.

The Security Council proceeded to vote on draft resolution S/1998/620 and adopted it unanimously as resolution 1181 (1998) (for the text, see S/RES/1181 (1998); to be issued in Official Records of the Security Council, Fifty-third Year, Resolutions and Decisions of the Security Council, 1998).

98-40712 (E) 311298 /...

Letter dated 29 June 1998 from the Secretary-General addressed to the President of the Security Council (S/1998/581)

Letter dated 25 June 1998 from the Permanent Representative of the Democratic Republic of the Congo to the United Nations addressed to the Secretary-General (S/1998/582)

Letter dated 25 June 1998 from the Permanent Representative of Rwanda to the United Nations addressed to the Secretary-General (S/1998/583)

(see also S/1996/15/Add.43-45; and S/1997/40/Add.5, 7, 9, 13, 16, 17 and 21)

The Security Council met to consider the item at its 3903rd meeting, held on 13 July 1998, in accordance with the understanding reached in its prior consultations, having before it the letter dated 29 June 1998 from the Secretary-General addressed to the President of the Security Council (S/1998/581); the letter dated 25 June 1998 from the Permanent Representative of the Democratic Republic of the Congo to the United Nations addressed to the Secretary-General (S/1998/582) and the letter dated 25 June 1998 from the Permanent Representative of Rwanda to the United Nations addressed to the Secretary-General (S/1998/583).

The President, with the consent of the Council, invited the representatives of the Democratic Republic of the Congo and Rwanda, at their request, to participate in the discussion without the right to vote.

The President stated that, following consultations of the Council, he had been authorized to make a statement on behalf of the Council and read out the text of that statement (for the text, see S/PRST/1998/20; to be issued in Official Records of the Security Council, Fifty-third Year, Resolutions and Decisions of the Security Council, 1998).

The situation in the occupied Arab territories (see S/11935/Add.18-21, 44 and 45; S/13033/Add.9-11 and 28; S/13737/Add.7, 8, 18, 20, 22 and 50; S/14326/Add.50; S/14840/Add.1-4, 12, 13, 15, 16 and 45; S/15560/Add.6, 7, 20, 30 and 31; S/16880/Add.36; S/17725/Add.3, 4, 48 and 49; S/18570/Add.49-51; S/19420/Add.1, 2, 4, 5, 13 and 15; S/20370/Add.5, 6, 22, 26, 34 and 44; S/21100/Add.10, 12, 17, 20, 39, 40, 42, 44, 45 and 48-50; S/22110 and Add.12 and 20; S/23370/Add.1, 13 and 50; S/1994/20/Add.8 and 10; S/1995/40/Add.8, 18 and 19; S/1996/15/Add.15 and 38; S/1997/40/Add.9 and 11; and S/1998/44/Add.26)

The Security Council continued its consideration of the item at its 3904th meeting, held on 13 July 1998, in accordance with the understanding reached in its prior consultations, having before it the letter dated 23 June 1998 from the Chargé d'affaires a.i. of the Permanent Mission of the Sudan to the United Nations addressed to the President of the Security Council (S/1998/558).

In accordance with the decisions taken at the 3900th meeting, held on 30 June 1998, the President invited the representative of Israel and the observer of Palestine to participate in the discussion without the right to vote.

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The President stated that, following consultations of the Council, he had been authorized to make a statement on behalf of the Council and read out the text of that statement (for the text, see S/PRST/1998/21; to be issued in Official Records of the Security Council, Fifty-third Year, Resolutions and Decisions of the Security Council, 1998).

The situation in the Central African Republic (see S/1997/40/Add.31 and 44; and S/1998/44/Add.5, 11 and 12)

The Security Council resumed its consideration of the item at its 3905th meeting, held on 14 July 1998, in accordance with the understanding reached in its prior consultations, having before it the report of the Secretary-General on the United Nations Mission in the Central African Republic (S/1998/540).

The President, with the consent of the Council, invited the representative of the Central African Republic, at his request, to participate in the discussion without the right to vote.

The President drew attention to the text of a draft resolution (S/1998/637) which had been prepared in the course of the Council's prior consultations.

The Security Council proceeded to vote on draft resolution S/1998/637 and adopted it unanimously as resolution 1182 (1998) (for the text, see S/RES/1182 (1998); to be issued in Official Records of the Security Council, Fifty-third Year, Resolutions and Decisions of the Security Council, 1998).

The situation in Afghanistan (see S/1994/20/Add.3, 11, 31 and 47; S/1996/15/Add.6, 14, 38, 41 and 42; S/1997/40/Add.15, 27 and 50; and S/1998/44/Add.14; see also S/19420/Add.44; S/20370/Add.14-16; and S/21100/Add.1)

The Security Council resumed its consideration of the item at its 3906th meeting, held on 14 July 1998, in accordance with the understanding reached in its prior consultations, having before it the report of the Secretary-General (S/1998/532).

The President stated that, following consultations of the Council, he had been authorized to make a statement on behalf of the Council and read out the text of that statement (for the text, see S/PRST/1998/22; to be issued in Official Records of the Security Council, Fifty-third Year, Resolutions and Decisions of the Security Council, 1998).

The situation in Croatia (see S/25070/Add.37; S/1995/40/Add.5, 16, 17, 19, 23, 30, 31, 35, 39, 46 and 50; S/1996/15/Add.1, 2, 4, 7, 20, 26, 28, 30, 32, 45 and 50; S/1997/40/Add.2, 4, 9, 11, 16, 18, 28, 37, 42 and 50; and S/1998/44/Add.2, 6, 9 and 26; see also S/22110/Add.38, 47 and 50; S/23370/Add.1, 5, 7, 14, 16, 19, 21, 23, 24, 26, 28, 29, 31, 32, 35-37, 40, 43, 45, 46, 49 and 50; S/25070/Add.1, 4, 7-9, 11-13, 15-19, 21-23, 24 and Corr.1, 26, 28-30, 32-34, 37, 39-42 and 45; S/1994/20 and Add.4, 6, 8, 10, 12-17, 20, 21, 23, 25, 26, 31, 34, 37, 38, 44-47 and 49; S/1995/40 and Add.1, 2, 6, 12, 14, 15, 18, 24, 26-29, 32, 36, 37, 40, 44 and 47-50; S/1996/15/Add.6, 8, 13, 18, 21, 31, 37, 39, 40, 47 and 49; S/1997/40/Add.6, 10, 12, 14, 19, 21, 23, 34, 47 and 48; and S/1998/44/Add.11, 19, 20 and 24)

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The Security Council resumed its consideration of the item at its 3907th meeting, held on 15 July 1998, in accordance with the understanding reached in its prior consultations, having before it the report of the Secretary-General on the United Nations Mission of Observers in Prevlaka (S/1998/578).

The President, with the consent of the Council, invited the representatives of Croatia, Germany and Italy, at their request, to participate in the discussion without the right to vote.

The President drew attention to the text of a draft resolution (S/1998/642), which had been submitted by France, Germany, Italy, Japan, Portugal, the Russian Federation, Slovenia, Sweden, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

The Security Council proceeded to vote on draft resolution S/1998/642 and adopted it unanimously as resolution 1183 (1998) (for the text, see S/RES/1183 (1998); to be issued in Official Records of the Security Council, Fifty-third Year, Resolutions and Decisions of the Security Council, 1998).

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for such Violations Committed in the Territory of Neighbouring States (see also S/25070/Add.10, 25, 36, 40 and 51; S/1994/20 and Add.6, 13, 15, 16, 19, 22, 24, 25, 27, 31, 40, 44, 47 and 49; and S/1995/40/Add.5, 7, 8, 16, 22, 28, 32, 33, 35, 41, 48 and 49; and S/1996/15/Add.8)

The Security Council met to consider the item at its 3908th meeting, held on 15 July 1998, in accordance with the understanding reached in its prior consultations, having before it the letter dated 8 July 1998 from the Secretary-General addressed to the President of the Security Council (S/1998/640), containing, inter alia, the proposal that the Council extend the deadline for nominations for judges to the Trial Chambers of the International Tribunal for Rwanda until 4 August 1998.

The Council endorsed the proposal of the Secretary-General and agreed that the President of the Security Council would inform the Secretary-General accordingly (S/1998/646).

The situation in Bosnia and Herzegovina (see S/23370/Add.36, 40, 43 and 45; S/25070/Add.1, 4, 7-9, 11-13, 15, 16, 18, 19, 22, 23, 24 and Corr.1, 26, 29, 34, 37 and 45; S/1994/20 and Add.4, 6, 8, 10, 13-17, 20, 21, 23, 25, 34, 37, 38, 44-47 and 49; S/1995/40 and Add.1, 6, 14, 15, 17, 18, 24, 26-29, 31, 35-37, 40 and 47-50; S/1996/15/Add.13, 31, 40 and 49; S/1997/40/Add.6, 10, 12, 19, 23 and 50; and S/1998/44/Add.11, 20 and 24; see also S/22110/Add.38, 47 and 50; S/23370/Add.1, 5, 7, 14, 16, 19, 21, 23, 24, 26, 28, 29, 31, 32, 35, 37, 40, 46, 49 and 50; S/25070/Add.4, 8, 13, 17, 19, 21, 24 and Corr.1, 26, 28, 30, 32, 33, 37 and 39-42; S/1994/20/Add.12, 26, 31, 45 and 49; S/1995/40/Add.2, 5, 12, 16, 18, 19, 23, 30, 32, 39, 44, 46, 47 and 50; S/1996/15/Add.1, 2, 4, 6-8, 18, 20, 21, 26, 28, 30, 32, 37, 39, 45, 47 and 50; S/1997/40/Add.2, 4, 9, 11, 14, 16, 18, 21, 28, 34, 37, 42, 47, 48 and 50; and S/1998/44/Add.2, 6, 9, 19 and 26)

/...

The Security Council resumed its consideration of the item at its 3909th meeting, held on 16 July 1998, in accordance with the understanding reached in its prior consultations, having before it the reports of the Secretary-General on the United Nations Mission in Bosnia and Herzegovina (S/1998/227 and Corr.1 and Add.1 and S/1998/491).

The President, with the consent of the Council, invited the representatives of Bosnia and Herzegovina, Germany and Italy, at their request, to participate in the discussion without the right to vote.

The President drew attention to the text of a draft resolution (S/1998/648) which had been submitted by France, Germany, Italy, Japan, Portugal, the Russian Federation, Sweden, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

The Security Council proceeded to vote on draft resolution S/1998/648 and adopted it unanimously as resolution 1184 (1998) (for the text, see S/RES/1184 (1998); to be issued in Official Records of the Security Council, Fifty-third Year, Resolutions and Decisions of the Security Council, 1998).

Annex 64

ILC, State responsibility, Draft articles provisionally adopted by the Drafting Committee on second reading, UN doc. A/CN.4/L.600, 21 August 2000 [extract]

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State responsibility

Draft articles provisionally adopted by the Drafting Committee on second reading**

PART ONE

THE INTERNATIONALLY WRONGFUL ACT OF A STATE

CHAPTER I

General principles

Article 1

Responsibility of a State for its internationally wrongful acts

Every internationally wrongful act of a State entails the international responsibility of that State.

* Re-issued for technical reasons in English, French and Spanish only.

** Incorporating the reports of the Drafting Committee at its fiftieth and its fifty-first sessions contained in documents A/CN.4/L.569 and A/CN.4/L.574 and Corrs.1 (English only), 2 (French only), 3 and 4 (Spanish only).

GE.00-63225

Article 53 [48]

Conditions relating to resort to countermeasures

1. Before taking countermeasures, the injured State shall call on the responsible State, in accordance with article 44, to fulfil its obligations under Part Two.

2. The injured State shall notify the responsible State of any decision to take countermeasures, and offer to negotiate with that State.

3. Notwithstanding paragraph 2, the injured State may take such provisional and urgent countermeasures as may be necessary to preserve its rights.

4. Countermeasures other than those in paragraph 3 may not be taken while the negotiations are being pursued in good faith and have not been unduly delayed.

5. Countermeasures may not be taken, and if already taken must be suspended within a reasonable time if:

(a) The internationally wrongful act has ceased, and

(b) The dispute is submitted to a court or tribunal which has the authority to make decisions binding on the parties.

6. Paragraph 5 does not apply if the responsible State fails to implement the dispute settlement procedures in good faith.

Article 54

Countermeasures by States other than the injured State

1. Any State entitled under article 49, paragraph 1 to invoke the responsibility of a State may take countermeasures at the request and on behalf of any State injured by the breach, to the extent that that State may itself take countermeasures under this Chapter.

2. In the cases referred to in article 41, any State may take countermeasures, in accordance with the present Chapter in the interest of the beneficiaries of the obligation breached.

3. Where more than one State takes countermeasures, the States concerned shall cooperate in order to ensure that the conditions laid down by this Chapter for the taking of countermeasures are fulfilled.

Article 55 [48]

Termination of countermeasures

Countermeasures shall be terminated as soon as the responsible State has complied with its obligations under Part Two in relation to the internationally wrongful act.

Annex 65

ILC, *Report of the International Law Commission on the work of its fifty-second session (2000)*, UN doc. A/CN.4/513, 15 February 2001 [extract]

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Report of the International Law Commission on the work of its fifty-second session (2000)

Topical summary of the discussion held in the Sixth Committee of the General Assembly during its fifty-fifth session prepared by the Secretariat

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than negotiation, such as mediation or conciliation, which could also cause the suspension or postponement of countermeasures.

168. The view was also expressed that the approach in paragraphs 2 to 5 was misconceived. The alleged duty to offer to negotiate before taking countermeasures, and to suspend countermeasures while negotiations were pursued, did not reflect the position under general international law, as stated in the *Air Services Agreement* case. It was impossible to lay down a rule prohibiting the use of countermeasures during negotiations. Nor would such a rule be either practical or desirable *de lege ferenda*. It would force the victim State to have recourse to one particular method of dispute settlement; it might be inconsistent with Article 33 of the Charter of the United Nations; and it might encourage States to break their obligations in order to force another State to negotiate. Moreover, there was little room to negotiate when genocide, for example, was being committed.

Paragraph 3

169. It was pointed out that if a State needed to take countermeasures, it could easily resort to provisional measures, thus making formal countermeasures a hollow procedure. Furthermore, there was no explanation why "provisional and urgent countermeasures" were more provisional than other countermeasures, and no special rules were provided for their application. It was suggested that paragraph 3 should be deleted, since countermeasures were by nature provisional and injured States must not be given occasion to neglect their obligation of notification and negotiation under paragraph 2. Instead, "provisional countermeasures" should be governed by the existing rules of international law, particularly the provisions of the Charter of the United Nations.

Paragraph 4

170. It was suggested that the relationship between countermeasures and ongoing negotiations should be considered further; it was an issue that could be revisited in connection with dispute-settlement provisions. The view was expressed that international jurisprudence had not established that countermeasures could not be resorted to until every effort had been made to achieve a negotiated solution; thus there was nothing to prevent States from taking immediate countermeasures in emergency situations. According to another view, paragraph 4 should be made applicable in all cases.

Paragraph 5

171. The suggestion was made that the word "and", connecting subparagraphs (a) and (b), should be replaced by "or", since the two conditions need not be fulfilled jointly.

172. Concerning subparagraph (b), the view was expressed that the requirement that countermeasures should be suspended if the dispute was submitted to arbitration or judicial settlement was consistent with the understanding that countermeasures must remain an instrument of last resort. It was observed that there was no room for countermeasures in cases where a mandatory dispute-settlement procedure existed, except where that procedure was obstructed by the other party and where countermeasures were urgent and necessary to protect the rights of the injured State, in the event that the dispute had not yet been submitted to an institution with the authority to make decisions that could protect such rights. As such, subparagraph (b) warranted being moved to a separate article immediately following draft article 50 (and making draft article 51, paragraph 2, redundant). It was also suggested that when countermeasures were suspended, those which were necessary for preserving the rights of the injured State could be maintained until the court or tribunal imposed provisional measures.

173. Others maintained that the duty not to take or to suspend countermeasures had no support under general international law, since it could discourage recourse to third-party dispute settlement and it failed to take account of the possibility that jurisdiction might be disputed.

Article 54
Countermeasures by States other than the injured State

174. The view was expressed that while draft article 54 was not without pertinence, since unlawful situations would not be left unresolved in cases where an injured State was not able to take countermeasures on its own, the risk of abuse could outweigh the benefits. It was also pointed out, however, that, as the draft stood, States other than the injured State were not entitled to take countermeasures, unless requested to do so by the injured State, for non-serious breaches of

erga omnes obligations. They might call for cessation and non-repetition under article 49, paragraph 2, but could do nothing to induce compliance. Doubt was expressed that that was the desired result.

175. Others expressed strong opposition to "collective countermeasures" and called for the deletion of draft article 54 as going beyond existing law. It was observed that the draft article, and particularly the phrase "countermeasures by States other than the injured State", which was deemed to be vague and imprecise, would introduce elements akin to "collective sanctions" or "collective intervention" into the regime of State responsibility. Such a development would run counter to the basic principle that countermeasures should and could be taken only by a country injured by an internationally wrongful act. Furthermore, "collective countermeasures" could provide a further pretext for power politics in international relations. It was also pointed out that the scope of the provision was too wide since an interested State, even if not injured itself, might take countermeasures without even consulting the affected States.

176. It was further pointed out that there were cases where such relations between States might also fall under the jurisdiction of international organizations responsible for security matters. Some speakers expressed difficulty in accepting the idea that the right to react could be delegated to a group of countries acting outside any institutional framework. It was suggested that collective countermeasures could be legitimate only in the context of intervention by the competent international or regional institutions, and that the situations envisaged in draft article 54 were adequately dealt with under Articles 39 to 41 of the Charter of the United Nations. Caution was also advised since draft article 54 could lead to the taking of multilateral or collective countermeasures simultaneously with other measures taken by the competent United Nations bodies. It was emphasized that the draft articles must not be allowed to create overlapping legal regimes that could weaken the Organization as a whole or marginalize the Security Council.

177. It was further queried how the principle of proportionality would operate in the situation envisaged under draft article 54, especially if "any" State was authorized to take countermeasures, as it deemed appropriate. It was suggested that "collective countermeasures" were inconsistent with the principle of proportionality enunciated in draft article 52, for they would become tougher when non-injured States joined in, with the undesirable consequence that countermeasures might greatly outweigh the extent of the injury. According to a further view, it was necessary to clarify whether the concept of proportionality applied to the measures employed by each State separately against the violator, or to all the countermeasures taken together. It was proposed that a provision should be added to article 53 requiring all States intending to take countermeasures to mutually agree on them before taking them.

Paragraph 1

178. It was suggested that countermeasures adopted by third (indirectly injured) States should be aimed primarily at the cessation of the internationally wrongful act rather than at obtaining reparation for the directly injured State.

Paragraph 2

179. In support of this paragraph, the view was expressed that while it would be unacceptable for any State to take countermeasures at the request of any injured State, the only exception concerned the acts referred to in article 41.

180. Others, while supporting the paragraph, pointed out that its consequences remained largely imprecise. For example, the issue of whether to authorize "any" State to take countermeasures against the author of a serious breach of the essential obligations owed to the international community needed to be studied further. It was further observed that if the notion of "interest of the beneficiaries" was meant to limit the scope of possible countermeasures, then paragraph 2 had to be interpreted cautiously. It was also proposed that paragraph 2 should be placed in a separate article, which would make it clear that countermeasures taken in response to a serious breach of an essential obligation owed to the international community should be coordinated by the United Nations.

181. Still others were of the view that the alleged right of any State to take countermeasures in the interest of the beneficiaries of the obligation breached went well beyond the progressive development of international law, and suggested that paragraph 2 should be deleted. It was remarked that determining whether a serious breach had occurred was a matter to be dealt with

under Chapter VII of the Charter of the United Nations. It was not appropriate to alter the principles of the Charter by allowing for collective countermeasures, undertaken unilaterally, without the involvement of the central body of the international community, leaving it up to the individual State to decide whether there had been a serious breach, what sort of countermeasure should be applied and under what circumstances they should be lifted. There was also a danger that disproportionate unilateral acts, which in reality were not justified by the interest they sought to protect, might be disguised as countermeasures, which would threaten the credibility of the concept. It was further pointed out that even accepting the proposition, on the basis of the *Barcelona Traction* case, that States at large had a legal interest in respect of violations of certain obligations, it did not necessarily follow that all States could vindicate those interests in the same way as directly injured States. As they stood, the proposals were potentially highly destabilizing of treaty relations. It was questioned whether a State should really be able to contravene any of its treaties, including, for example, those of a technical nature, in response to any serious breach by another State of any *erga omnes* obligations. The view was also expressed that draft article 54, paragraph 2, created the impression that in case of a breach under article 41, any State could take countermeasures without first having made requests in accordance with article 49, paragraph 2 (b). While such an interpretation could be excluded by article 53, paragraph 1, the connection needed to be made explicit.

Paragraph 3

182. While paragraph 3 was described as being sufficiently flexible in the light of the rapid developments in international law and in the interests of proportionality, others observed that the obligation to cooperate was poorly defined and would cast doubt on the legality of the actions of States and fail to contain countermeasures within their legal framework.

Part Four. General provisions

183. There was support for including all the general provisions in Part Four and for the non-inclusion of the saving clause on diplomatic immunity, pending a consensus on its wording. There was also support for excluding proposed draft article B (A/CN.4/507/Add.4, para. 429) since the content of international obligations of a State was a complex issue which could not be covered in so brief a provision.

184. Noting the close relationship between the law of treaties, especially articles 60 and 73 of the 1969 Vienna Convention, and the law on State responsibility as well as the need to avoid blurring the distinction between them with regard to breaches of contractual obligations, it was suggested that a reference to the parallelism between the Convention and the draft articles should be maintained through a "non-prejudice" clause.

Article 56 [37]
Lex specialis

185. There was support for the saving clause as a restatement of a well-established principle of international law. However, it was also remarked that draft article 56 did not provide a sufficient safeguard with respect to draft articles 49 and 54.

186. There were also several suggestions, as follows: it would be helpful to state explicitly that the draft articles were residual in character and would come into play only if and to the extent that the primary rule or special regime agreed to by the State concerned had not specified the consequences of a breach of obligations; the article should be clarified because it appeared to preclude even residual application of the draft articles in cases where the special rules of international law proved inadequate and such a position would excessively restrict implementation of the new instrument; the article should be drafted in positive terms so that its application was "without prejudice" to the application of other special rules of international law and should also contain a saving clause to the effect that specific regimes should not take precedence over peremptory norms of international law; the term *lex specialis* should be replaced by the concept of "special regimes", which was widely accepted in international law, since the article dealt not with norms or acts, but specifically with a body of norms which constituted a regime of responsibility; and the words "and principles" should be added after "rules" in draft article 56.

Annex 66

ILC, Fourth report on State responsibility by Mr. James Crawford, Special Rapporteur, UN Doc A/CN.4/517, 2 April 2001 [extract]

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Fourth report on State responsibility

by Mr. James Crawford, Special Rapporteur

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38. The remaining issue concerns article 43 (b) (ii), which deals with so-called "integral" obligations.[49] Although the term is sometimes used to cover obligations in the general interest (e.g., human rights obligations), the Special Rapporteur understands it to refer to obligations which operate in an all-or-nothing fashion. Under article 60 (2) (c) of the 1969 Vienna Convention, the breach of an integral obligation entitles any other party to suspend the performance of the treaty not merely vis-à-vis the State in breach but vis-à-vis all States. In other words, a breach of such an obligation threatens the treaty structure as a whole. Fortunately this is not true of human rights treaties; rather the reverse, since one State cannot disregard human rights on account of another State's breach. Treaties such as non-proliferation and disarmament treaties, or others requiring complete collective restraint if they are to work (as with the central obligations of States parties to the Outer Space Treaty or the Antarctic Treaty), are integral in this sense. The category may be narrow but it is an important one. Moreover it has as much relevance for State responsibility as it has for treaty suspension. The other parties to an integral obligation which has been breached may have no interest in its suspension and should be able to insist, vis-à-vis the responsible State, on cessation and restitution. For these reasons the Special Rapporteur believes that article 43 (b) (ii) should be retained. The Drafting Committee might, however, usefully consider its wording, in accordance with several suggestions which have been made.[50]

Other States entitled to invoke responsibility: article 49

39. Although Japan suggests that article 49 is not a "core issue of the law of State responsibility", most other Governments have accepted the principle it seeks to embody, and it was of course expressly accepted by the International Court in 1970. But a number of questions have been raised as to the formulation and intended function of the article.

40. The first concerns the notion of "the protection of a collective interest" in article 49 (1) (a). After all, which international obligations (beyond the purely bilateral) are not in some sense "established for the protection of a collective interest"? Even treaties that most closely approximate to the classical "bundle" of bilateral obligations are at a deeper level established for the protection of a collective interest. For example, it is usually thought that diplomatic relations between two States pursuant to the Vienna Convention on Diplomatic Relations are bilateral in character, and "ordinary" breaches of that Convention vis-à-vis one State would hardly be considered as raising issues for the other States which are parties to it. But at some level of seriousness a breach of the Convention might well raise questions about the institution of diplomatic relations which would be of legitimate concern to third States.[51] It may be that article 49 (a) should be further qualified so

[49] For the development of the concept of integral obligations, see the Special Rapporteur's Third Report, A/CN.4/507, para. 91.

[50] These include the addition of the word "necessarily" and the change of "or" to "and" in the final phrase. Thus the paragraph could read: "(b) Is of such a character as necessarily to affect the enjoyment of the rights and the performance of the obligations of all the States concerned".

[51] Cf. *United States Diplomatic and Consular Staff in Tehran*, *I.C.J. Reports 1980*, p. 43 (para. 92).

as to limit it to breaches which in themselves are such as to impair the collective interest of the States parties to the obligation.[52]

41. Indeed it has been suggested that a similar restriction should be applied to article 49 (1) (b). France suggests that the paragraph should be limited to the serious breaches covered by Part Two, Chapter II. This suggestion has greater force in respect of claims for reparation as envisaged by article 49 (2) (b) than it has for claims to cessation. It does not seem disproportionate to allow all States to insist upon the cessation of a breach of an obligation owed to the international community as a whole. This would seem to follow directly from the Court's dictum in *Barcelona Traction*. Whether a claimant State should be able to seek reparation "in the interests of the injured State or of the beneficiaries of the obligation breached" is, perhaps, less clear. In particular, this is something the injured State, if one exists, might reasonably be expected to do for itself.

42. These are matters which the Commission may wish to revisit, and the Drafting Committee should certainly consider whether article 49 (1) (a) might be more tightly drawn. On the other hand, the Special Rapporteur believes that article 49 in general achieves a certain balance, *de lege ferenda*, between the collective interest in compliance with basic community values and the countervailing interest in not encouraging the proliferation of disputes. In his view a case for the fundamental reconsideration of article 49 has not been made.

[52] Such a suggestion would still allow for the paradigm case intended to be covered by paragraph (a), viz., the interest of Ethiopia and Liberia in South Africa's performance of its obligations as mandatory of South West Africa *Second South West Africa Cases*, *I.C.J. Reports 1966*, p. 6. See Third Report, A/CN.4/507, paras. 85, 92.

(c) Countermeasures should be suspended in the event that the dispute is submitted in good faith to third-party settlement, and provided the breach is not a continuing one.[99]

This is, broadly speaking, the system adopted by the Drafting Committee in what is now article 53. But it must be conceded at once that the distinction between urgent and definitive countermeasures does not correspond with existing international law.[100] It was developed in the course of the first reading by way of a compromise between sharply opposed positions on the suspensive effect of negotiations.[101] The distinction is more a guide to the application of principles of necessity and proportionality in the given case than it is a distinct requirement. Quite apart from questions of definition, there are also practical difficulties with it. For example, it has been pointed out that the mere agreement to submit a dispute to arbitration cannot require any suspension of countermeasures, since until the tribunal has been constituted and is in a position to deal with the dispute, even a power to order binding provisional measures will not help.[102] Thus even if the distinction between provisional and other measures is retained, there is a good case for reconsidering this aspect of article 53 (5).

Article 54
Countermeasures by States other than the injured State

70. Article 54 deals with the taking of countermeasures by the States referred to in article 49, i.e. States other than the injured State. It deals rather succinctly with two different situations. The first concerns countermeasures taken by an article 49 State "at the request and on behalf of any State injured by the breach" (para. 1). The second concerns countermeasures taken in response to serious breaches covered by Chapter II, Part Three (para. 2). Paragraph 3 deals with the coordination of countermeasures taken by more than one State. Evidently the effect is as follows: Within the general limits of Chapter II, an article 49 State can take countermeasures in support of an injured State, or independently in the case of a serious breach. Otherwise such States are limited to the invocation of responsibility under article 49 (2). By contrast, under former article [40], any State could take countermeasures in the case of an "international crime", a breach of human rights or the breach of certain collective obligations, irrespective of the position of any other State, including the State directly injured by the breach.

71. General international law on this subject is still rather embryonic, but that fact points both ways.[103] Some Governments are concerned at the tendency to "freeze" the law while it is in a process of development. For others, article 54 raises highly controversial issues about the balance between law enforcement and intervention, in a field already controversial enough. It also reopens the questions of the linkage

[99] Third Report, A/CN.4/507/Add.3, para. 360.
[100] As noted, e.g., by Italy, A/C.6/55/SR.16, para. 27; and the United Kingdom, A/C.6/55/SR.14, para. 36. The United Kingdom makes the point that such a requirement may deter a State from agreeing to third-party settlement ibid.
[101] See *Yearbook ... 1996*, vol. I, pp. 171-176.
[102] See United States, A/C.6/55/SR.18, para. 69; Costa Rica, A/C.6/55/SR.17, para. 65. This is the basis for the provisional measures jurisdiction of the International Tribunal of the Law of the Sea in the period prior to the constitution of an arbitral tribunal see UNCLOS, art. 290 (5).
[103] For a review of the practice, see Third Report, A/CN.4/507/Add.4, paras. 391-394.

between individual State action and collective measures under the Charter or under regional arrangements.

72. The thrust of Government comments is that article 54, and especially paragraph 2, has no basis in international law and would be destabilizing.[104] This is stressed both by those Governments which are generally worried about the "subjectivity" and risks of abuse inherent in the taking of countermeasures,[105] and by those who are more supportive of countermeasures as a vehicle for resolving disputes about responsibility.[106]

73. Besides this general concern, Governments have called for a clearer link between article 54 and the provisions of Chapter VII of the Charter. Some argue that countermeasures in response to violations of community obligations should be taken through the United Nations,[107] or that at least there should be a reference to Security Council action.[108] There is a difficulty in that action taken pursuant to the Charter falls outside the scope of the articles (see article 59), while action duly taken as between the parties to regional arrangements is covered either by article 20 (consent) or article 56 (*lex specialis*). It would no doubt be possible to subordinate action under article 54 (2) to action duly taken under Chapter VII of the Charter of the United Nations, but this would not deal with all situations. More generally, it is unclear how the articles (whether or not they were to take the form of a treaty) could resolve the issue of the interface between individual and genuinely collective action. This can be seen by reference to the comments of Governments concerning the duty of cooperation postulated in article 54 (3). Governments have doubted that it can have any real effect, given its vagueness and generality. Some have called for a more explicit formulation of article 54 (3),[109] and also for clarification as to the relation between article 54 (2) and article 42 (2) (c).[110] But at the normative level it is difficult to see what more can be said.

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104 E.g., Israel, A/C.6/55/SR.15, para. 25.

105 Botswana, A/C.6/55/SR.15, para. 63; China, A/C.6/55/SR.14, paras. 40-41; Cuba, A/C.6/55/SR.18, para. 59; Germany, A/C.6/55/SR.14, para. 54; Japan, A/C.6/55/SR.14, para. 67; Libyan Arab Jamahiriya, A/C.6/55/SR.22, para. 52. Other Governments called for the problem to be studied further e.g., Algeria, A/C.6/55/SR.18, para. 5; Jordan, A/C.6/55/SR.18, para. 17; Poland, A/C.6/55/SR.18, para. 48; also Republic of Korea, in Comments and Observations … (A/CN.4/515).

106 E.g., United Kingdom, A/C.6/55/SR.14, paras. 31-32.

107 E.g., Mexico, A/C.6/55/SR.20, paras. 35-36; Islamic Republic of Iran, A/C.6/55/SR.15, para. 17.

108 E.g., Cameroon, A/C.6/55/SR.24, paras. 63-64; Greece, A/C.6/55/SR.17, para. 85.

109 E.g., Austria, A/C.6/55/SR.17, para. 79; Chile, A/C.6/55/SR.17, para. 48; Jordan, A/C.6/55/SR.18, para. 17. Some other Governments supported the flexibility of paragraph 3 e.g. Italy, A/C.6/55/SR.16, para. 28.

110 Austria, A/C.6/55/SR.17, paras. 77-78.

74. There is a further difficulty, in that the mere deletion of article 54 will carry the implication that countermeasures can only be taken by injured States, narrowly defined. The current state of international law on measures taken in the general or common interest is no doubt uncertain. But it cannot be the case, in the Special Rapporteur's view, that countermeasures in aid of compliance with international law are limited to breaches affecting the individual interests of powerful States or their allies.[111] Obligations towards the international community, or otherwise in the collective interest, are not "second-class" obligations by comparison with obligations under bilateral treaties. While it can be hoped that international organizations will be able to resolve the humanitarian or other crises that often arise from serious breaches of international law, States have not abdicated their powers of individual action. Thus if article 54 were to be deleted, there would at least be a need for some form of saving clause.[112]

Article 55
Termination of countermeasures

75. As noted, article 55 has been generally welcomed.

General conclusion on Part Two bis, Chapter II

76. The Special Rapporteur regards it as a matter of general policy for the Commission to decide as between the available options on countermeasures set out in paragraph 60 above. His personal view is that, while there are still problems in the drafting of the articles (especially article 51), the essential balance struck in Chapter II is a reasonable one *de lege ferenda*. As to article 53, the existence of certain minimum procedural standards under international law for taking and maintaining countermeasures can hardly be denied, even if the articles go beyond those limits in referring to "provisional and urgent countermeasures". As to article 54, it can hardly be argued in the light of recent practice that countermeasures are not available to article 49 States in any circumstances. But the apparent paradox of "unilateral collective action" raises understandable concerns, and it may be that nothing more than a saving clause is appropriate at the present time. In the light of the debate in plenary and of the conclusions reached on issues such as dispute settlement and the form of the draft articles, it will be necessary to examine the possibilities for a balanced and generally acceptable text.

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111 A number of Governments suggested that countermeasures could be taken by article 49 States, but only to ensure cessation of the breach e.g., Austria, A/C.6/55/SR.17, para. 76; Cuba, A/C.6/55/SR.18, para. 59; Poland, A/C.6/55/SR.18, para. 48. Others would limit article 54 to cases of "serious breaches" as defined in article 41: Costa Rica, A/C.6/55/SR.17, para. 63; Italy, A/C.6/55/SR.16, para. 28; Russian Federation, A/C.6/55/SR.18, para. 51; Spain, A/C.6/55/SR.16, para. 13.

112 An idea suggested by the United Kingdom A/C.6/55/SR.14, para. 32.

Annex 67

ILC, *Yearbook of the International Law Commission*, 2001, vol. I [extract]

Available at:

https://legal.un.org/ilc/publications/yearbooks/english/ilc_2001_v1.pdf

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A/CN.4/SER.A/2001

YEARBOOK OF THE INTERNATIONAL LAW COMMISSION

2001

Volume I

Summary records of the meetings of the fifty-third session 23 April–1 June and 2 July–10 August 2001

UNITED NATIONS
New York and Geneva, 2006

Pambou-Tchivounda, Mr. Pellet, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Simma, Mr. Tomka.

State responsibility[1] (*continued*) (A/CN.4/513, sect. A, A/CN.4/515 and Add.1–3,[2] A/CN.4/517 and Add.1,[3] A/CN.4/L.602 and Corr.1 and Rev.1)

[Agenda item 2]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE ON SECOND READING (*continued*)

1. The CHAIRMAN invited the members to continue their consideration of the report of the Drafting Committee containing the titles and texts of the draft articles on responsibility of States for internationally wrongful acts adopted by the Drafting Committee on second reading (A/CN.4/L.602 and Corr.1).

2. Mr. KAMTO said that, from his point of view, Part Three of the draft raised the most difficulties. He particularly regretted the retention of the phrase "as far as possible" in article 50 [47] (Object and limits of countermeasures), paragraph 3, because of the risk of contradicting paragraph 2. The implicit admission that in certain cases countermeasures might be taken in such a way as not to permit the resumption of performance of the obligations in question could conflict with the idea in paragraph 2 that countermeasures were limited to non-performance "for the time being". As currently worded, paragraph 3 was illogical and an example of faulty legal drafting. The Chairman of the Drafting Committee had stated, at the previous meeting, that it was impossible to guarantee the irreversibility of certain countermeasures. He did not agree: States must be able to give such a guarantee, and were not free to take whatever action they chose in the guise of countermeasures. In that sense, countermeasures differed from other measures.

3. As to article 53 [48] (Conditions relating to resort to countermeasures), he regretted the omission of paragraph 4 in the form in which it had been provisionally adopted at the previous session. The former paragraph 4 had been drafted to balance out former paragraph 3. Urgent countermeasures might indeed be necessary in some cases, but the new wording of article 53 was unacceptable. It meant that countermeasures could be taken even while negotiations were being pursued in good faith, thus providing a legal basis for unlawful or excessive acts by States and creating inequality among States. The former paragraph 4 should be reinstated.

4. He approved of the deletion of article 54 adopted at the previous session, which was not in line with State practice, and its replacement by a safeguard clause. The progressive development of international law should not be treated as synonymous with the creation of prospective law.

5. Mr. ECONOMIDES, commenting on article 50, said it involved an even more serious contradiction than the one mentioned by Mr. Kamto, namely with article 29 [36] (Duty of continued performance). The phrase "as far as possible" in article 50, paragraph 3, exempted a State taking countermeasures from the requirement to permit continued performance at all times. Generally speaking, it was easier for a State taking countermeasures than for the responsible State to monitor its own conduct and to decide whether its actions complied with international law. It would be preferable either to delete the words "as far as possible" from article 50, paragraph 3, or to add them to article 29.

6. He interpreted the word "validly" in article 46 (Loss of the right to invoke responsibility), to mean that an injured State could not, either explicitly or implicitly, waive its claim arising from a serious breach as defined in article 41 (Application of this chapter) until the case had been finally resolved in accordance with the rules of international law. According to the Special Rapporteur, that principle was to be spelt out in the commentary, but he would have preferred it to be incorporated into article 46.

7. Paragraphs 2, 3 and 4 of article 53 were currently seriously unbalanced. The obligation of dispute settlement was among the most fundamental obligations of the international legal order and it must not be made to give way before the unilateral act of a State in the form of countermeasures. Under paragraph 2 an injured State could, without notification, take urgent countermeasures to preserve its rights and it might reasonably be supposed that, in such a case, the State would itself decide what measures to take. What was worse, as a result of the deletion of the former paragraph 4, an injured State could take fresh countermeasures, urgent or otherwise, after notifying the responsible State and even if negotiations had begun in good faith. That opened the door wide to arbitrary action by States and breached the obligation of peaceful settlement of disputes. Moreover, it placed unlimited confidence in a State that might merely be alleging an injury and condemned in advance a State that was allegedly responsible but might not in fact be so, or not entirely. Those three paragraphs were unacceptable and he hoped the General Assembly or a conference of plenipotentiaries would redress the balance. As for the deleted article 54, he had been in favour of retaining it as expressing the primacy to be given to the organized international community, but could accept the compromise solution adopted. Lastly, he emphasized that the draft as a whole, and especially the provisions on countermeasures, still stood in great need of an appropriate system of dispute settlement.

8. Mr. SIMMA said the draft was a great improvement over the one adopted on first reading at the forty-eighth session.[4] He particularly approved of the replacement of former article 40 [42] by articles 43 [40] (Invocation of

[1] For the text of the draft articles provisionally adopted by the Drafting Committee on second reading, see *Yearbook . . . 2000*, vol. II (Part Two), chap. IV, annex.

[2] Reproduced in *Yearbook . . . 2001*, vol. II (Part One).

[3] Ibid.

[4] See 2665th meeting, footnote 5.

Annex 68

ILC, *Yearbook of the International Law Commission*, 2001, vol. II, Part One [extract]

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A/CN.4/SER.A/2001/Add.1 (Part 1)

YEARBOOK OF THE INTERNATIONAL LAW COMMISSION

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Volume II
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endorses this position and the procedural treatment now being given to this rule. It feels, however, that article 45 in its present form weakens the importance of the obligation to exhaust local remedies in cases concerning the treatment of non-nationals.

2. Article 22, adopted on first reading, categorically recognized the existence of the principle of the exhaustion of local remedies as "the logical consequence of the nature of international obligations whose purpose and specific object is the protection of individuals".[1] Despite this recognition, article 45, now provisionally adopted on second reading by the Drafting Committee, eliminates the references to cases concerning the treatment of individuals and merely indicates in a general way that the responsibility of a State may not be invoked if the claim is one to which the rule of exhaustion of local remedies applies, and any available and effective local remedy has not been exhausted.[2]

3. By this method, the Commission is trying not to prejudge its own future work in respect of diplomatic protection and recognizes the existence of a debate on the enforcement of the rule of exhaustion of local remedies outside the field of diplomatic protection.

4. Mexico feels that the draft articles should not weaken a principle that is firmly rooted in international law, i.e. the exhaustion of local remedies in cases concerning the treatment of non-nationals, simply in pursuit of a neutrality that does not appear to be justified. In this context, Mexico believes it to be more appropriate to distinguish these cases from others that may arise in the different areas of diplomatic protection to which this rule could apply, and suggests that an additional paragraph should be added to article 45, to be inserted between the present subparagraphs (*a*) and (*b*), recognizing that responsibility may not be invoked in cases concerning the treatment of non-nationals if they have not previously exhausted the effective and available local remedies. The present subparagraph (*b*) could be reformulated to refer to situations other than the treatment of non-nationals.

[1] *Yearbook ... 1977*, vol. II (Part Two), p. 31, para. (6) of the commentary to article 22, adopted on first reading by the Commission at its forty-eighth session, cited in *Yearbook ... 1996*, vol. II (Part Two), p. 60, footnote 181.

[2] *Yearbook ... 2000*, vol. II (Part Two), art. 45 (*b*), p. 69.

Republic of Korea

For reasons of precision, the words "by an injured State" should be inserted between the words "may not be invoked" and "if".

Spain

Spain considers that the exhaustion of local remedies is a rule of fundamental importance to the regime of international State responsibility. It is true that the current wording of subparagraph (*b*) leaves open the question of the legal character of this rule, which will be substantive or procedural depending on the primary norm or norms breached. By the same token, however, the advisability of including the rule of exhaustion of local remedies in article 45 as one of the conditions for the admissibility of claims is doubtful, as that would seem to imply that a purely procedural character has been attributed to it. It would be preferable to include the prior exhaustion rule among the provisions in part one, as in the 1996 draft, or in the general provisions.

United States of America

Article 45 addresses the admissibility of claims and provides that State responsibility may not be invoked if (*a*) a claim is not brought in accordance with applicable rules relating to nationality of claims and (*b*) the claim is "one to which the rule of exhaustion of local remedies applies, and any available and effective local remedy has not been exhausted". The Special Rapporteur's comments to this provision make clear that exhaustion of local remedies is "a standard procedural condition to the admissibility of the claim" rather than a substantive requirement (*Yearbook ... 1999*, vol. II (Part One), document A/CN.4/498 and Add.1–4, p. 40, para. 145). The United States welcomes this clarification by the Special Rapporteur, and further notes that the precise parameters of this procedural rule should be dealt with in detail under the topic of diplomatic protection (see *Yearbook ... 2000*, vol. II (Part One), document A/CN.4/507 and Add.1–4, para. 241, p. 66).

Article 46. Loss of the right to invoke responsibility

Netherlands

The Netherlands would point to a certain discrepancy between articles 46 and 49. Article 46 is based on the idea that responsibility may not be invoked if the injured State has validly waived its claim. However, article 49 allows a third State to invoke responsibility, for example, in cases where the responsible State has violated an obligation owed to the international community as a whole (*erga omnes*) and, in the interests of the directly injured State, to seek compliance with the obligation of reparation. The Netherlands believes that in cases of breaches of *erga omnes* obligations the directly injured State does not have the right to waive its claim. It can only do so for itself; it cannot set aside the rights of third States and/or of the international community as a whole to invoke the responsibility of the State which committed the breach of an *erga omnes* obligation.

Republic of Korea

1. A question arises as to whether "States other than the injured State" within the meaning of article 49 may seek from the responsible State the cessation of a wrongful act and assurances of non-repetition, where "the injured State" has validly waived its claim pursuant to article 46.

2. In the view of the Republic of Korea, where a peremptory norm has been breached, States with a legal interest should retain the right to seek cessation and assurances of non-repetition, even if the injured State has waived its claim. In this case, it would be more appropriate to state that the injured State cannot validly waive the

Slovakia

See comments on article 43, above.

United Kingdom of Great Britain and Northern Ireland

Observations of a general nature on the concept of the "interested" State have been made above (see article 43). The following comments relate to matters of detail (see article 49, paragraphs 1–2, below).

Paragraph 1

Argentina

Paragraph 1 (*a*) of the article entitles a State other than the injured State to invoke the responsibility of another State if "[t]he obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest". Since any multilateral treaty can establish, to one degree or another, a "collective interest", Argentina believes it would be helpful for the Commission to offer additional clarification regarding this concept, in order to facilitate the interpretation and application of the article in practice.

Republic of Korea

See comments on article 43 (*b*) above.

United Kingdom of Great Britain and Northern Ireland

1. It is not clear what is meant, in paragraph 1 (*a*), by "the protection of a collective interest". It is presumably intended to establish a subcategory of multilateral treaties; but it is not apparent what the criterion is or how it should be applied. It is neither necessary nor desirable to establish such a subcategory of multilateral treaties. The words "and is established for the protection of a collective interest" should be omitted, thus allowing all parties to all multilateral treaties and other multilateral obligations to have the status of "interested States", although in the absence of injury a State would not, of course, be entitled to the full range of remedies available to an injured State.

2. The term "may seek" in paragraph 2 is wrong. It implies that, for example, some parties to multilateral treaties not established for the protection of collective interests may not even request that another party cease its violation of the treaty.

Paragraph 2

Austria

1. States other than the injured State may request the cessation of the internationally wrongful act and guarantees of non-repetition (see article 49, paragraph 2 (*a*)). Of special interest is the fact that the draft introduces a new right to request compliance with the obligation of reparation in the interest of the injured State or of the beneficiaries of the obligation breached (art. 49, para. 2 (*b*)). This would refer to victims of human rights violations or of violations of the environment. Whereas in the case of the environment this could concern nationals of the State invoking the responsibility, the first case—victims of human rights violations—will mainly concern nationals of other States, most importantly nationals of the State which has committed the wrongful act.

2. This concept is very interesting and worth pursuing, but probably has not yet been fully explored. In most cases of human rights violations, States will act in favour of victims who are nationals of the State which has committed the wrongful act. Each party to the multilateral human rights treaty concerned would be entitled to invoke this right, so that there could be a multitude of claimants. In this case, the draft does not envisage an obligation to cooperate between the States invoking responsibility, as article 54, paragraph 3, with its—relatively weak—obligation to cooperate applies only to countermeasures. It must be borne in mind that the problem of many States entitled to invoke State responsibility with regard to one single wrongful act seems to raise more problems than are solved by the draft articles. Further reflection and the introduction of a more precise regime is therefore required.

United Kingdom of Great Britain and Northern Ireland

1. The comments on paragraph 2 made in the debate in the Sixth Committee suggest that paragraph 2 (*b*) is highly ambiguous. It might be seen as entitling an interested State to demand reparation, to be made to itself, thereby advancing the interest "of the injured State or of the beneficiaries of the obligation breached". The State might subsequently make over all or part of the fruits of reparation to the injured State or to the "beneficiaries". This would be a wholly novel form of action in international law. Alternatively, paragraph 2 (*b*) might be seen as entitling an interested State to demand that the responsible State make reparation directly to the injured State or to the beneficiaries of the obligation. It is not clear how it is envisaged that paragraph 2 (*b*) would operate in practice.

2. A further difficulty concerns the relevance of the wishes of the injured State. If there is an injured State, it can make the claim itself. If it chooses not to claim, the position should be treated as analogous to a waiver under draft article 46 and, just as the injured State loses thereby the right to invoke the responsibility of the claim, so should the possibility of the claim being made by others on its behalf be extinguished. Exceptional circumstances, such as the invasion of a State and the destruction of the capacity of its Government to invoke responsibility or otherwise act on behalf of the State, might be dealt with in the commentary.

3. A similar point might be made concerning the wishes of the beneficiaries of the obligation; but there is a more fundamental concern in relation to that provision. The proposed right to invoke responsibility "in the interest … of the beneficiaries of the obligation breached" is novel. The United Kingdom is sympathetic to the aim of ensuring that there are States entitled to claim in all cases of injury to common interests, such as the high seas and its

resources and the atmosphere. There are, on the other hand, concerns that the current formula would have unintended and undesirable effects.

4. In the context of human rights obligations falling within draft article 49, paragraph 1, for example, draft article 49, paragraph 2 (*b*), appears to entitle all States not merely to call for cessation and assurances and guarantees of non-repetition, but also to demand compliance with obligations concerning reparation "in the interest" of the abused nationals or residents of the responsible State. It may involve decisions on the form of repatriation that intrude deeply into the internal affairs of other States. That provision goes further than is warranted by customary international law. It also goes further than is necessary for the safeguarding of human rights: for that purpose, cessation of the wrongdoing is the crucial step. There is a serious risk that this provision may disrupt the established frameworks for the enforcement of human rights obligations, with the consequence that States will become less willing to develop instruments setting out primary norms of human rights law. Paragraph 2 (*b*) goes further than is warranted in the current state of international law, and is unnecessary. It is hoped that the Commission will reconsider draft article 49, paragraph 2 (*b*), with a view to omitting it or at least narrowing its scope.

United States of America

The United States notes that under article 49, paragraph 2 (*a*), States other than injured States may seek from the responsible State assurances and guarantees of non-repetition in addition to cessation of the internationally wrongful act. For the reasons expressed above with respect to article 30 (*b*), the United States believes that the "assurances and guarantees of non-repetition" provision of article 49, paragraph 2 (*a*) should likewise be deleted.

Paragraph 3

Austria

Owing to the lack of an obligation to cooperate in the context of article 49, it is possible to imagine that various States formulate various, even contradictory, requests, or, in the case of requests for compensation, that they demand compensation at very different financial levels. It must be asked how the State which has committed the wrongful act is to deal with such a situation, and what would be the effects of the compliance with one of these requests and not with the others. If it is not possible to solve this problem in a clear way, at least article 49, paragraph 3, should be revised so as to comprise also a provision about cooperation similar to the provision contained in article 54, paragraph 3. It would be an even better solution to envisage an obligation to negotiate a joint request of all States interested in exercising their rights under article 49, paragraph 3.

Republic of Korea

This paragraph would be more straightforward if the words "*mutatis mutandis*" were inserted between the words "under articles 44, 45 and 46 apply" and "to an invocation of responsibility", since some modification might be needed in the process of the application of articles 44–46 to the invocation of responsibility by States other than the injured State.

Chapter II. Countermeasures

Argentina

1. In 1998 Argentina stated that "[t]he taking of countermeasures should not be codified as a *right* normally protected by the international legal order, but as an act merely *tolerated* by the contemporary law of nations" in exceptional cases.[1] In this connection, the treatment of the topic in part two *bis*, chapter II, sets limits and conditions on this concept that are in principle acceptable, inasmuch as it makes clear the exceptional nature of countermeasures and specifies the procedural and substantive conditions relating to resort to countermeasures.

2. As for the logical place for rules on this topic, some have even suggested excluding the question of countermeasures. While from a purely theoretical standpoint there may be some merit in not including this question, there is no doubt that, in the current state of international law, countermeasures represent one of the means of giving effect to international responsibility. Against that background, Argentina thinks it would be useful to include precise rules within the draft articles, as contained in part two *bis*, chapter II, so as to minimize the possibility of abuses.

[1] *Yearbook ... 1998*, vol. II (Part One), document A/CN.4/488 and Add.1–3, p. 151, para. 9.

China

China believes that in the context of respect for international law and the basic principles of international relations, countermeasures can be one of the legitimate means available to a State injured by an internationally wrongful act to redress the injury and protect its interests. However, in view of past and possible future abuses of countermeasures, recognition of the right of an injured State to take countermeasures must be accompanied by appropriate restrictions on their use, in order to strike a balance between the recognition of the legitimacy of countermeasures and the need to prevent their abuse. China has noted that the relevant provisions in the revised text have been improved in this regard. For example, the new text has added a number of qualifying conditions, clearly setting out the purposes of and limitations on the use of countermeasures. In addition, the reference to "interim measures of protection" has been deleted. China welcomes these improvements, but the text on countermeasures still needs further refinement and improvement. In particular, the desirability of the newly added article 54 on "collective countermeasures" and the related article 49 needs further consideration.

Annex 69

ILC, Draft articles on responsibility of States for internationally wrongful acts, with commentaries, 2001 [extract][*]

Available at:

https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf

French version available at:

https://legal.un.org/ilc/texts/instruments/french/commentaries/9_6_2001.pdf

[*] Pp. 88-90, 96-98, 117-119, 126-128 of this document are at MG, vol. II, Annex 15.

Annex 69

Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries

2001

Text adopted by the International Law Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/56/10). The report, which also contains commentaries on the draft articles, appears in the *Yearbook of the International Law Commission, 2001*, vol. II, Part Two, as corrected.

obligations towards the international community as a whole[640] all concern obligations which, it is generally accepted, arise under peremptory norms of general international law. Likewise the examples of peremptory norms given by the Commission in its commentary to what became article 53 of the 1969 Vienna Convention[641] involve obligations to the international community as a whole. But there is at least a difference in emphasis. While peremptory norms of general international law focus on the scope and priority to be given to a certain number of fundamental obligations, the focus of obligations to the international community as a whole is essentially on the legal interest of all States in compliance—i.e. in terms of the present articles, in being entitled to invoke the responsibility of any State in breach. Consistently with the difference in their focus, it is appropriate to reflect the consequences of the two concepts in two distinct ways. First, serious breaches of obligations arising under peremptory norms of general international law can attract additional consequences, not only for the responsible State but for all other States. Secondly, all States are entitled to invoke responsibility for breaches of obligations to the international community as a whole. The first of these propositions is the concern of the present chapter; the second is dealt with in article 48.

Article 40. Application of this chapter

1. This chapter applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law.

2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation.

Commentary

(1) Article 40 serves to define the scope of the breaches covered by the chapter. It establishes two criteria in order to distinguish "serious breaches of obligations under peremptory norms of general international law" from other types of breaches. The first relates to the character of the obligation breached, which must derive from a peremptory norm of general international law. The second qualifies the intensity of the breach, which must have been serious in nature. Chapter III only applies to those violations of international law that fulfil both criteria.

(2) The first criterion relates to the character of the obligation breached. In order to give rise to the application of this chapter, a breach must concern an obligation arising under a peremptory norm of general international law. In accordance with article 53 of the 1969 Vienna Convention, a peremptory norm of general international law is one which is:

> accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

The concept of peremptory norms of general international law is recognized in international practice, in the jurisprudence of international and national courts and tribunals and in legal doctrine.[642]

(3) It is not appropriate to set out examples of the peremptory norms referred to in the text of article 40 itself, any more than it was in the text of article 53 of the 1969 Vienna Convention. The obligations referred to in article 40 arise from those substantive rules of conduct that prohibit what has come to be seen as intolerable because of the threat it presents to the survival of States and their peoples and the most basic human values.

(4) Among these prohibitions, it is generally agreed that the prohibition of aggression is to be regarded as peremptory. This is supported, for example, by the Commission's commentary to what was to become article 53,[643] uncontradicted statements by Governments in the course of the Vienna Conference on the Law of Treaties,[644] the submissions of both parties in the *Military and Paramilitary Activities in and against Nicaragua* case and the Court's own position in that case.[645] There also seems to be widespread agreement with other examples listed in the Commission's commentary to article 53: viz. the prohibitions against slavery and the slave trade, genocide, and racial discrimination and apartheid. These practices have been prohibited in widely ratified international treaties and conventions admitting of no exception. There was general agreement among Governments as to the peremptory character of these prohibitions at the Vienna Conference. As to the peremptory character of the prohibition against

[640] According to ICJ, obligations *erga omnes* "derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination": *Barcelona Traction* (see footnote 25 above), at p. 32, para. 34. See also *East Timor* (footnote 54 above); *Legality of the Threat or Use of Nuclear Weapons* (*ibid.*); and *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Preliminary Objections* (*ibid.*).

[641] The Commission gave the following examples of treaties which would violate the article due to conflict with a peremptory norm of general international law, or a rule of *jus cogens*: "(*a*) a treaty contemplating an unlawful use of force contrary to the principles of the Charter, (*b*) a treaty contemplating the performance of any other act criminal under international law, and (*c*) a treaty contemplating or conniving at the commission of such acts, such as trade in slaves, piracy or genocide, in the suppression of which every State is called upon to co-operate … treaties violating human rights, the equality of States or the principle of self-determination were mentioned as other possible examples", *Yearbook ... 1966*, vol. II, p. 248.

[642] For further discussion of the requirements for identification of a norm as peremptory, see paragraph (5) of the commentary to article 26, with selected references to the case law and literature.

[643] *Yearbook … 1966*, vol. II, pp. 247–249.

[644] In the course of the conference, a number of Governments characterized as peremptory the prohibitions against aggression and the illegal use of force: see *Official Records of the United Nations Conference on the Law of Treaties, First Session, Vienna, 26 March to 24 May 1968, summary records of the plenary meeting and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.68.V.7), 52nd meeting, paras. 3, 31 and 43; 53rd meeting, paras. 4, 9, 15, 16, 35, 48, 59 and 69; 54th meeting, paras. 9, 41, 46 and 55; 55th meeting, paras. 31 and 42; and 56th meeting, paras. 6, 20, 29 and 51.

[645] *Military and Paramilitary Activities in and against Nicaragua* (see footnote 36 above), pp. 100–101, para. 190; see also the separate opinion of magistrate Nagendra Singh (president), p. 153.

genocide, this is supported by a number of decisions by national and international courts.[646]

(5) Although not specifically listed in the Commission's commentary to article 53 of the 1969 Vienna Convention, the peremptory character of certain other norms seems also to be generally accepted. This applies to the prohibition against torture as defined in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The peremptory character of this prohibition has been confirmed by decisions of international and national bodies.[647] In the light of the description by ICJ of the basic rules of international humanitarian law applicable in armed conflict as "intransgressible" in character, it would also seem justified to treat these as peremptory.[648] Finally, the obligation to respect the right of self-determination deserves to be mentioned. As the Court noted in the *East Timor* case, "[t]he principle of self-determination ... is one of the essential principles of contemporary international law", which gives rise to an obligation to the international community as a whole to permit and respect its exercise.[649]

(6) It should be stressed that the examples given above may not be exhaustive. In addition, article 64 of the 1969 Vienna Convention contemplates that new peremptory norms of general international law may come into existence through the processes of acceptance and recognition by the international community of States as a whole, as referred to in article 53. The examples given here are thus without prejudice to existing or developing rules of international law which fulfil the criteria for peremptory norms under article 53.

(7) Apart from its limited scope in terms of the comparatively small number of norms which qualify as peremptory, article 40 applies a further limitation for the purposes of the chapter, viz. that the breach should itself have been "serious". A "serious" breach is defined in paragraph 2 as one which involves "a gross or systematic failure by the responsible State to fulfil the obligation" in question. The word "serious" signifies that a certain order of magnitude of violation is necessary in order not to trivialize the breach and it is not intended to suggest that any violation of these obligations is not serious or is somehow excusable. But relatively less serious cases of breach of peremptory norms can be envisaged, and it is necessary to limit the scope of this chapter to the more serious or systematic breaches. Some such limitation is supported by State practice. For example, when reacting against breaches of international law, States have often stressed their systematic, gross or egregious nature. Similarly, international complaint procedures, for example in the field of human rights, attach different consequences to systematic breaches, e.g. in terms of the non-applicability of the rule of exhaustion of local remedies.[650]

(8) To be regarded as systematic, a violation would have to be carried out in an organized and deliberate way. In contrast, the term "gross" refers to the intensity of the violation or its effects; it denotes violations of a flagrant nature, amounting to a direct and outright assault on the values protected by the rule. The terms are not of course mutually exclusive; serious breaches will usually be both systematic and gross. Factors which may establish the seriousness of a violation would include the intent to violate the norm; the scope and number of individual violations; and the gravity of their consequences for the victims. It must also be borne in mind that some of the peremptory norms in question, most notably the prohibitions of aggression and genocide, by their very nature require an intentional violation on a large scale.[651]

(9) Article 40 does not lay down any procedure for determining whether or not a serious breach has been committed. It is not the function of the articles to establish new institutional procedures for dealing with individual cases, whether they arise under chapter III of Part Two or otherwise. Moreover, the serious breaches dealt with in this chapter are likely to be addressed by the competent international organizations, including the Security Council and the General Assembly. In the case of aggression, the Security Council is given a specific role by the Charter of the United Nations.

Article 41. Particular consequences of a serious breach of an obligation under this chapter

1. States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40.

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[646] See, for example, ICJ in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Provisional Measures* (footnote 412 above), pp. 439–440; *Counter-Claims* (footnote 413 above), p. 243; and the District Court of Jerusalem in the *Attorney-General of the Government of Israel* v. *Adolf Eichmann* case, ILR, vol. 36, p. 5 (1961).

[647] Cf. the United States Court of Appeals, Ninth Circuit, in *Siderman de Blake and Others* v. *The Republic of Argentina and Others*, ILR, vol. 103, p. 455, at p. 471 (1992); the United Kingdom Court of Appeal in *Al Adsani* v. *Government of Kuwait and Others*, ILR, vol. 107, p. 536, at pp. 540–541 (1996); and the United Kingdom House of Lords in *Pinochet* (footnote 415 above), pp. 841 and 881. Cf. the United States Court of Appeals, Second Circuit, in *Filartiga* v. *Pena-Irala*, ILR, vol. 77, p. 169, at pp. 177–179 (1980).

[648] *Legality of the Threat or Use of Nuclear Weapons* (see footnote 54 above), p. 257, para. 79.

[649] *East Timor* (*ibid.*). See Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, General Assembly resolution 2625 (XXV), annex, fifth principle.

[650] See the *Ireland* v. *the United Kingdom* case (footnote 236 above), para. 159; cf., e.g., the procedure established under Economic and Social Council resolution 1503 (XLVIII), which requires a "consistent pattern of gross and reliably attested violations of human rights".

[651] At its twenty-second session, the Commission proposed the following examples as cases denominated as "international crimes":

> "(*a*) a serious breach of an international obligation of essential importance for the maintenance of international peace and security, such as that prohibiting aggression;
>
> "(*b*) a serious breach of an international obligation of essential importance for safeguarding the right of self-determination of peoples, such as that prohibiting the establishment or maintenance by force of colonial domination;
>
> "(*c*) a serious breach on a widespread scale of an international obligation of essential importance for safeguarding the human being, such as those prohibiting slavery, genocide and *apartheid*;
>
> "(*d*) a serious breach of an international obligation of essential importance for the safeguarding and preservation of the human environment, such as those prohibiting massive pollution of the atmosphere or of the seas."

Yearbook ... 1976, vol. II (Part Two), pp. 95–96.

2. No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation.

3. This article is without prejudice to the other consequences referred to in this Part and to such further consequences that a breach to which this chapter applies may entail under international law.

Commentary

(1) Article 41 sets out the particular consequences of breaches of the kind and gravity referred to in article 40. It consists of three paragraphs. The first two prescribe special legal obligations of States faced with the commission of "serious breaches" in the sense of article 40, the third takes the form of a saving clause.

(2) Pursuant to *paragraph 1* of article 41, States are under a positive duty to cooperate in order to bring to an end serious breaches in the sense of article 40. Because of the diversity of circumstances which could possibly be involved, the provision does not prescribe in detail what form this cooperation should take. Cooperation could be organized in the framework of a competent international organization, in particular the United Nations. However, paragraph 1 also envisages the possibility of non-institutionalized cooperation.

(3) Neither does paragraph 1 prescribe what measures States should take in order to bring to an end serious breaches in the sense of article 40. Such cooperation must be through lawful means, the choice of which will depend on the circumstances of the given situation. It is, however, made clear that the obligation to cooperate applies to States whether or not they are individually affected by the serious breach. What is called for in the face of serious breaches is a joint and coordinated effort by all States to counteract the effects of these breaches. It may be open to question whether general international law at present prescribes a positive duty of cooperation, and paragraph 1 in that respect may reflect the progressive development of international law. But in fact such cooperation, especially in the framework of international organizations, is carried out already in response to the gravest breaches of international law and it is often the only way of providing an effective remedy. Paragraph 1 seeks to strengthen existing mechanisms of cooperation, on the basis that all States are called upon to make an appropriate response to the serious breaches referred to in article 40.

(4) Pursuant to *paragraph 2* of article 41, States are under a duty of abstention, which comprises two obligations, first, not to recognize as lawful situations created by serious breaches in the sense of article 40 and, secondly, not to render aid or assistance in maintaining that situation.

(5) The first of these two obligations refers to the obligation of collective non-recognition by the international community as a whole of the legality of situations resulting directly from serious breaches in the sense of article 40.[652] The obligation applies to "situations" created by these breaches, such as, for example, attempted acquisition of sovereignty over territory through the denial of the right of self-determination of peoples. It not only refers to the formal recognition of these situations, but also prohibits acts which would imply such recognition.

(6) The existence of an obligation of non-recognition in response to serious breaches of obligations arising under peremptory norms already finds support in international practice and in decisions of ICJ. The principle that territorial acquisitions brought about by the use of force are not valid and must not be recognized found a clear expression during the Manchurian crisis of 1931–1932, when the Secretary of State, Henry Stimson, declared that the United States of America—joined by a large majority of members of the League of Nations—would not:

> admit the legality of any situation de facto nor ... recognize any treaty or agreement entered into between those Governments, or agents thereof, which may impair the ... sovereignty, the independence or the territorial and administrative integrity of the Republic of China, ... [nor] recognize any situation, treaty or agreement which may be brought about by means contrary to the covenants and obligations of the Pact of Paris of August 27, 1928.[653]

The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations affirms this principle by stating unequivocally that States shall not recognize as legal any acquisition of territory brought about by the use of force.[654] As ICJ held in *Military and Paramilitary Activities in and against Nicaragua*, the unanimous consent of States to this declaration "may be understood as an acceptance of the validity of the rule or set of rules declared by the resolution by themselves".[655]

(7) An example of the practice of non-recognition of acts in breach of peremptory norms is provided by the reaction of the Security Council to the Iraqi invasion of Kuwait in 1990. Following the Iraqi declaration of a "comprehensive and eternal merger" with Kuwait, the Security Council, in resolution 662 (1990) of 9 August 1990, decided that the annexation had "no legal validity, and is considered null and void", and called upon all States, international organizations and specialized agencies not to recognize that annexation and to refrain from any action or dealing that might be interpreted as a recognition of it, whether direct or indirect. In fact, no State recognized the

[652] This has been described as "an essential legal weapon in the fight against grave breaches of the basic rules of international law" (C. Tomuschat, "International crimes by States: an endangered species?", *International Law Theory and Practice — Essays in Honour of Eric Suy*, K. Wellens, ed. (The Hague, Martinus Nijhoff, 1998), p. 253, at p. 259.

[653] Secretary of State's note to the Chinese and Japanese Governments, in Hackworth, *Digest of International Law* (Washington, D.C., United States Government Printing Office, 1940), vol. I, p. 334; endorsed by Assembly resolutions of 11 March 1932, *League of Nations Official Journal*, March 1932, Special Supplement No. 101, p. 87. For a review of earlier practice relating to collective non-recognition, see J. Dugard, *Recognition and the United Nations* (Cambridge, Grotius, 1987), pp. 24–27.

[654] General Assembly resolution 2625 (XXV), annex, first principle.

[655] *Military and Paramilitary Activities in and against Nicaragua* (see footnote 36 above), at p. 100, para. 188.

legality of the purported annexation, the effects of which were subsequently reversed.

(8) As regards the denial by a State of the right of self-determination of peoples, the advisory opinion of ICJ in the *Namibia* case is similarly clear in calling for a non-recognition of the situation.[656] The same obligations are reflected in the resolutions of the Security Council and General Assembly concerning the situation in Rhodesia[657] and the Bantustans in South Africa.[658] These examples reflect the principle that where a serious breach in the sense of article 40 has resulted in a situation that might otherwise call for recognition, this has nonetheless to be withheld. Collective non-recognition would seem to be a prerequisite for any concerted community response against such breaches and marks the minimum necessary response by States to the serious breaches referred to in article 40.

(9) Under article 41, paragraph 2, no State shall recognize the situation created by the serious breach as lawful. This obligation applies to all States, including the responsible State. There have been cases where the responsible State has sought to consolidate the situation it has created by its own "recognition". Evidently, the responsible State is under an obligation not to recognize or sustain the unlawful situation arising from the breach. Similar considerations apply even to the injured State: since the breach by definition concerns the international community as a whole, waiver or recognition induced from the injured State by the responsible State cannot preclude the international community interest in ensuring a just and appropriate settlement. These conclusions are consistent with article 30 on cessation and are reinforced by the peremptory character of the norms in question.[659]

(10) The consequences of the obligation of non-recognition are, however, not unqualified. In the *Namibia* advisory opinion the Court, despite holding that the illegality of the situation was opposable *erga omnes* and could not be recognized as lawful even by States not members of the United Nations, said that:

> the non-recognition of South Africa's administration of the Territory should not result in depriving the people of Namibia of any advantages derived from international cooperation. In particular, while official acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory.[660]

Both the principle of non-recognition and this qualification to it have been applied, for example, by the European Court of Human Rights.[661]

(11) The second obligation contained in paragraph 2 prohibits States from rendering aid or assistance in maintaining the situation created by a serious breach in the sense of article 40. This goes beyond the provisions dealing with aid or assistance in the commission of an internationally wrongful act, which are covered by article 16. It deals with conduct "after the fact" which assists the responsible State in maintaining a situation "opposable to all States in the sense of barring *erga omnes* the legality of a situation which is maintained in violation of international law".[662] It extends beyond the commission of the serious breach itself to the maintenance of the situation created by that breach, and it applies whether or not the breach itself is a continuing one. As to the elements of "aid or assistance", article 41 is to be read in connection with article 16. In particular, the concept of aid or assistance in article 16 presupposes that the State has "knowledge of the circumstances of the internationally wrongful act". There is no need to mention such a requirement in article 41, paragraph 2, as it is hardly conceivable that a State would not have notice of the commission of a serious breach by another State.

(12) In some respects, the prohibition contained in paragraph 2 may be seen as a logical extension of the duty of non-recognition. However, it has a separate scope of application insofar as actions are concerned which would not imply recognition of the situation created by serious breaches in the sense of article 40. This separate existence is confirmed, for example, in the resolutions of the Security Council prohibiting any aid or assistance in maintaining the illegal apartheid regime in South Africa or Portuguese colonial rule.[663] Just as in the case of the duty of non-recognition, these resolutions would seem to express a general idea applicable to all situations created by serious breaches in the sense of article 40.

(13) Pursuant to *paragraph 3*, article 41 is without prejudice to the other consequences elaborated in Part Two and to possible further consequences that a serious breach in the sense of article 40 may entail. The purpose of this paragraph is twofold. First, it makes it clear that a serious breach in the sense of article 40 entails the legal consequences stipulated for all breaches in chapters I and II of Part Two. Consequently, a serious breach in the sense of article 40 gives rise to an obligation, on behalf of the responsible State, to cease the wrongful act, to continue performance and, if appropriate, to give guarantees and assurances of non-repetition. By the same token, it entails a duty to make reparation in conformity with the rules set out in chapter II of this Part. The incidence of these obligations will no doubt be affected by the gravity of the breach in question, but this is allowed for in the actual language of the relevant articles.

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[656] *Namibia* case (see footnote 176 above), where the Court held that "the termination of the Mandate and the declaration of the illegality of South Africa's presence in Namibia are opposable to all States in the sense of barring *erga omnes* the legality of a situation which is maintained in violation of international law" (p. 56, para. 126).

[657] Cf. Security Council resolution 216 (1965) of 12 November 1965.

[658] See, e.g., General Assembly resolution 31/6 A of 26 October 1976, endorsed by the Security Council in its resolution 402 (1976) of 22 December 1976; Assembly resolutions 32/105 N of 14 December 1977 and 34/93 G of 12 December 1979; see also the statements of 21 September 1979 and 15 December 1981 issued by the respective presidents of the Security Council in reaction to the "creation" of Venda and Ciskei (S/13549 and S/14794).

[659] See also paragraph (7) of the commentary to article 20 and paragraph (4) of the commentary to article 45.

[660] *Namibia* case (see footnote 176 above), p. 56, para. 125.

[661] *Loizidou, Merits* (see footnote 160 above), p. 2216; *Cyprus* v. *Turkey* (see footnote 247 above), paras. 89–98.

[662] *Namibia* case (see footnote 176 above), p. 56, para. 126.

[663] See, e.g., Security Council resolutions 218 (1965) of 23 November 1965 on the Portuguese colonies, and 418 (1977) of 4 November 1977 and 569 (1985) of 26 July 1985 on South Africa.

(14) Secondly, paragraph 3 allows for such further consequences of a serious breach as may be provided for by international law. This may be done by the individual primary rule, as in the case of the prohibition of aggression. Paragraph 3 accordingly allows that international law may recognize additional legal consequences flowing from the commission of a serious breach in the sense of article 40. The fact that such further consequences are not expressly referred to in chapter III does not prejudice their recognition in present-day international law, or their further development. In addition, paragraph 3 reflects the conviction that the legal regime of serious breaches is itself in a state of development. By setting out certain basic legal consequences of serious breaches in the sense of article 40, article 41 does not intend to preclude the future development of a more elaborate regime of consequences entailed by such breaches.

Part Three

THE IMPLEMENTATION OF THE INTERNATIONAL RESPONSIBILITY OF A STATE

Part Three deals with the implementation of State responsibility, i.e. with giving effect to the obligations of cessation and reparation which arise for a responsible State under Part Two by virtue of its commission of an internationally wrongful act. Although State responsibility arises under international law independently of its invocation by another State, it is still necessary to specify what other States faced with a breach of an international obligation may do, what action they may take in order to secure the performance of the obligations of cessation and reparation on the part of the responsible State. This, sometimes referred to as the *mise-en-oeuvre* of State responsibility, is the subject matter of Part Three. Part Three consists of two chapters. Chapter I deals with the invocation of State responsibility by other States and with certain associated questions. Chapter II deals with countermeasures taken in order to induce the responsible State to cease the conduct in question and to provide reparation.

Chapter I

INVOCATION OF THE RESPONSIBILITY OF A STATE

Commentary

(1) Part One of the articles identifies the internationally wrongful act of a State generally in terms of the breach of any international obligation of that State. Part Two defines the consequences of internationally wrongful acts in the field of responsibility as obligations of the responsible State, not as rights of any other State, person or entity. Part Three is concerned with the implementation of State responsibility, i.e. with the entitlement of other States to invoke the international responsibility of the responsible State and with certain modalities of such invocation. The rights that other persons or entities may have arising from a breach of an international obligation are preserved by article 33, paragraph 2.

(2) Central to the invocation of responsibility is the concept of the injured State. This is the State whose individual right has been denied or impaired by the internationally wrongful act or which has otherwise been particularly affected by that act. This concept is introduced in article 42 and various consequences are drawn from it in other articles of this chapter. In keeping with the broad range of international obligations covered by the articles, it is necessary to recognize that a broader range of States may have a legal interest in invoking responsibility and ensuring compliance with the obligation in question. Indeed, in certain situations, all States may have such an interest, even though none of them is individually or specially affected by the breach.[664] This possibility is recognized in article 48. Articles 42 and 48 are couched in terms of the entitlement of States to invoke the responsibility of another State. They seek to avoid problems arising from the use of possibly misleading terms such as "direct" versus "indirect" injury or "objective" versus "subjective" rights.

(3) Although article 42 is drafted in the singular ("an injured State"), more than one State may be injured by an internationally wrongful act and be entitled to invoke responsibility as an injured State. This is made clear by article 46. Nor are articles 42 and 48 mutually exclusive. Situations may well arise in which one State is "injured" in the sense of article 42, and other States are entitled to invoke responsibility under article 48.

(4) Chapter I also deals with a number of related questions: the requirement of notice if a State wishes to invoke the responsibility of another (art. 43), certain aspects of the admissibility of claims (art. 44), loss of the right to invoke responsibility (art. 45), and cases where the responsibility of more than one State may be invoked in relation to the same internationally wrongful act (art. 47).

(5) Reference must also be made to article 55, which makes clear the residual character of the articles. In addition to giving rise to international obligations for States, special rules may also determine which other State or States are entitled to invoke the international responsibility arising from their breach, and what remedies they may seek. This was true, for example, of article 396 of the Treaty of Versailles, which was the subject of the decision in the *S.S. "Wimbledon"* case.[665] It is also true of article 33 of the European Convention on Human Rights. It will be a matter of interpretation in each case whether such provisions are intended to be exclusive, i.e. to apply as a *lex specialis*.

[664] Cf. the statement by ICJ that "all States can be held to have a legal interest" as concerns breaches of obligations *erga omnes*, *Barcelona Traction* (footnote 25 above), p. 32, para. 33, cited in paragraph (2) of the commentary to chapter III of Part Two.

[665] Four States there invoked the responsibility of Germany, at least one of which, Japan, had no specific interest in the voyage of the *S.S. "Wimbledon"* (see footnote 34 above).

that responsibility by another State or States. Thus, it is not the function of the articles to deal with such questions as the requirement for exhausting other means of peaceful settlement before commencing proceedings, or such doctrines as litispendence or election as they may affect the jurisdiction of one international tribunal *vis-à-vis* another.[681] By contrast, certain questions which would be classified as questions of admissibility when raised before an international court are of a more fundamental character. They are conditions for invoking the responsibility of a State in the first place. Two such matters are dealt with in article 44: the requirements of nationality of claims and exhaustion of local remedies.

(2) *Subparagraph* (a) provides that the responsibility of a State may not be invoked other than in accordance with any applicable rule relating to the nationality of claims. As PCIJ said in the *Mavrommatis Palestine Concessions* case:

> It is an elementary principle of international law that a State is entitled to protect its subjects, when injured by acts contrary to international law committed by another State, from whom they have been unable to obtain satisfaction through the ordinary channels.[682]

Subparagraph (*a*) does not attempt a detailed elaboration of the nationality of claims rule or of the exceptions to it. Rather, it makes it clear that the nationality of claims rule is not only relevant to questions of jurisdiction or the admissibility of claims before judicial bodies, but is also a general condition for the invocation of responsibility in those cases where it is applicable.[683]

(3) *Subparagraph* (b) provides that when the claim is one to which the rule of exhaustion of local remedies applies, the claim is inadmissible if any available and effective local remedy has not been exhausted. The paragraph is formulated in general terms in order to cover any case to which the exhaustion of local remedies rule applies, whether under treaty or general international law, and in spheres not necessarily limited to diplomatic protection.

(4) The local remedies rule was described by a Chamber of the Court in the *ELSI* case as "an important principle of customary international law".[684] In the context of a claim brought on behalf of a corporation of the claimant State, the Chamber defined the rule succinctly in the following terms:

> for an international claim [sc. on behalf of individual nationals or corporations] to be admissible, it is sufficient if the essence of the claim has been brought before the competent tribunals and pursued as far as permitted by local law and procedures, and without success.[685]

The Chamber thus treated the exhaustion of local remedies as being distinct, in principle, from "the merits of the case".[686]

(5) Only those local remedies which are "available and effective" have to be exhausted before invoking the responsibility of a State. The mere existence on paper of remedies under the internal law of a State does not impose a requirement to make use of those remedies in every case. In particular, there is no requirement to use a remedy which offers no possibility of redressing the situation, for instance, where it is clear from the outset that the law which the local court would have to apply can lead only to the rejection of any appeal. Beyond this, article 44, subparagraph (*b*), does not attempt to spell out comprehensively the scope and content of the exhaustion of local remedies rule, leaving this to the applicable rules of international law.[687]

Article 45. Loss of the right to invoke responsibility

The responsibility of a State may not be invoked if:

(*a*) the injured State has validly waived the claim;

(*b*) the injured State is to be considered as having, by reason of its conduct, validly acquiesced in the lapse of the claim.

Commentary

(1) Article 45 is analogous to article 45 of the 1969 Vienna Convention concerning loss of the right to invoke a ground for invalidating or terminating a treaty. The article deals with two situations in which the right of an injured State or other States concerned to invoke the responsibility of a wrongdoing State may be lost: waiver and acquiescence in the lapse of the claim. In this regard, the position of an injured State as referred to in article 42 and other States concerned with a breach needs to be distinguished. A valid waiver or settlement of the responsibility dispute

[681] For discussion of the range of considerations affecting jurisdiction and admissibility of international claims before courts, see G. Abi-Saab, *Les exceptions préliminaires dans la procédure de la Cour internationale* (Paris, Pedone, 1967); Sir Gerald Fitzmaurice, *The Law and Procedure of the International Court of Justice* (Cambridge, Grotius, 1986), vol. 2, pp. 427–575; and S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, 3rd ed. (The Hague, Martinus Nijhoff, 1997), vol. II, *Jurisdiction*.

[682] *Mavrommatis* (see footnote 236 above), p. 12.

[683] Questions of nationality of claims will be dealt with in detail in the work of the Commission on diplomatic protection. See first report of the Special Rapporteur for the topic "Diplomatic protection" in *Yearbook ... 2000*, vol. II (Part One), document A/CN.4/506 and Add.1.

[684] *ELSI* (see footnote 85 above), p. 42, para. 50. See also *Interhandel, Preliminary Objections, I.C.J. Reports 1959*, p. 6, at p. 27. On the exhaustion of local remedies rule generally, see, e.g., C. F. Amerasinghe, *Local Remedies in International Law* (Cambridge, Grotius, 1990); J. Chappez, *La règle de l'épuisement des voies de recours internes* (Paris, Pedone, 1972); K. Doehring, "Local remedies, exhaustion of", *Encyclopedia of Public International Law*, R. Bernhardt, ed. (footnote 409 above), vol. 3, pp. 238–242; and G. Perrin, "La naissance de la responsabilité internationale et l'épuisement des voies de recours internes dans le projet d'articles de la Commission du droit international", *Festschrift für Rudolf Bindschedler* (Bern, Stämpfli, 1980), p. 271. On the exhaustion of local remedies rule in relation to violations of human rights obligations, see, e.g., A. A. Cançado Trindade, *The Application of the Rule of Exhaustion of Local Remedies in International Law Its Rationale in the International Protection of Individual Rights* (Cambridge University Press, 1983); and E. Wyler, *L'illicite et la condition des personnes privées* (Paris, Pedone, 1995), pp. 65–89.

[685] *ELSI* (see footnote 85 above), p. 46, para. 59.

[686] *Ibid*., p. 48, para. 63.

[687] The topic will be dealt with in detail in the work of the Commission on diplomatic protection. See second report of the Special Rapporteur on diplomatic protection in *Yearbook ... 2001*, vol. II (Part One), document A/CN.4/514.

between the responsible State and the injured State, or, if there is more than one, all the injured States, may preclude any claim for reparation. Positions taken by individual States referred to in article 48 will not have such an effect.

(2) *Subparagraph* (a) deals with the case where an injured State has waived either the breach itself, or its consequences in terms of responsibility. This is a manifestation of the general principle of consent in relation to rights or obligations within the dispensation of a particular State.

(3) In some cases, the waiver may apply only to one aspect of the legal relationship between the injured State and the responsible State. For example, in the *Russian Indemnity* case, the Russian embassy had repeatedly demanded from Turkey a certain sum corresponding to the capital amount of a loan, without any reference to interest or damages for delay. Turkey having paid the sum demanded, the tribunal held that this conduct amounted to the abandonment of any other claim arising from the loan.[688]

(4) A waiver is only effective if it is validly given. As with other manifestations of State consent, questions of validity can arise with respect to a waiver, for example, possible coercion of the State or its representative, or a material error as to the facts of the matter, arising perhaps from a misrepresentation of those facts by the responsible State. The use of the term "valid waiver" is intended to leave to the general law the question of what amounts to a valid waiver in the circumstances.[689] Of particular significance in this respect is the question of consent given by an injured State following a breach of an obligation arising from a peremptory norm of general international law, especially one to which article 40 applies. Since such a breach engages the interest of the international community as a whole, even the consent or acquiescence of the injured State does not preclude that interest from being expressed in order to ensure a settlement in conformity with international law.

(5) Although it may be possible to infer a waiver from the conduct of the States concerned or from a unilateral statement, the conduct or statement must be unequivocal. In the *Certain Phosphate Lands in Nauru* case, it was argued that the Nauruan authorities before independence had waived the rehabilitation claim by concluding an agreement relating to the future of the phosphate industry as well as by statements made at the time of independence. As to the former, the record of negotiations showed that the question of waiving the rehabilitation claim had been raised and not accepted, and the Agreement itself was silent on the point. As to the latter, the relevant statements were unclear and equivocal. The Court held there had been no waiver, since the conduct in question "did not at any time effect a clear and unequivocal waiver of their claims".[690] In particular, the statements relied on "[n]otwithstanding some ambiguity in the wording … did not imply any departure from the point of view expressed clearly and repeatedly by the representatives of the Nauruan people before various organs of the United Nations".[691]

(6) Just as it may explicitly waive the right to invoke responsibility, so an injured State may acquiesce in the loss of that right. *Subparagraph* (b) deals with the case where an injured State is to be considered as having, by reason of its conduct, validly acquiesced in the lapse of the claim. The article emphasizes *conduct* of the State, which could include, where applicable, unreasonable delay, as the determining criterion for the lapse of the claim. Mere lapse of time without a claim being resolved is not, as such, enough to amount to acquiescence, in particular where the injured State does everything it can reasonably do to maintain its claim.

(7) The principle that a State may by acquiescence lose its right to invoke responsibility was endorsed by ICJ in the *Certain Phosphate Lands in Nauru* case, in the following passage:

> The Court recognizes that, even in the absence of any applicable treaty provision, delay on the part of a claimant State may render an application inadmissible. It notes, however, that international law does not lay down any specific time limit in that regard. It is therefore for the Court to determine in the light of the circumstances of each case whether the passage of time renders an application inadmissible.[692]

In the *LaGrand* case, the Court held the German application admissible even though Germany had taken legal action some years after the breach had become known to it.[693]

(8) One concern of the rules relating to delay is that additional difficulties may be caused to the respondent State due to the lapse of time, e.g. as concerns the collection and presentation of evidence. Thus, in the *Stevenson* case and the *Gentini* case, considerations of procedural fairness to the respondent State were advanced.[694] In contrast, the plea of delay has been rejected if, in the circumstances of a case, the respondent State could not establish the existence of any prejudice on its part, as where it has always had notice of the claim and was in a position to collect and preserve evidence relating to it.[695]

(9) Moreover, contrary to what may be suggested by the expression "delay", international courts have not engaged simply in measuring the lapse of time and applying clear-cut time limits. No generally accepted time limit,

[688] *Russian Indemnity* (see footnote 354 above), p. 446.

[689] Cf. the position with respect to valid consent under article 20: see paragraphs (4) to (8) of the commentary to article 20.

[690] *Certain Phosphate Lands in Nauru, Preliminary Objections* (see footnote 230 above), p. 247, para. 13.

[691] *Ibid*., p. 250, para. 20.

[692] *Ibid*., pp. 253–254, para. 32. The Court went on to hold that, in the circumstances of the case and having regard to the history of the matter, Nauru's application was not inadmissible on this ground (para. 36). It reserved for the merits any question of prejudice to the respondent State by reason of the delay. See further paragraph (8) of the commentary to article 13.

[693] *LaGrand*, *Provisional Measures* (see footnote 91 above) and *LaGrand, Judgment* (see footnote 119 above), at pp. 486–487, paras. 53–57.

[694] See *Stevenson*, UNRIAA, vol. IX (Sales No. 59.V.5), p. 385 (1903); and *Gentini, ibid.*, vol. X (Sales No. 60.V.4), p. 551 (1903).

[695] See, e.g., *Tagliaferro*, UNRIAA, vol. X (Sales No. 60.V.4), p. 592, at p. 593 (1903); see also the actual decision in *Stevenson* (footnote 694 above), pp. 386–387.

expressed in terms of years, has been laid down.[696] The Swiss Federal Department in 1970 suggested a period of 20 to 30 years since the coming into existence of the claim.[697] Others have stated that the requirements were more exacting for contractual claims than for non-contractual claims.[698] None of the attempts to establish any precise or finite time limit for international claims in general has achieved acceptance.[699] It would be very difficult to establish any single limit, given the variety of situations, obligations and conduct that may be involved.

(10) Once a claim has been notified to the respondent State, delay in its prosecution (e.g. before an international tribunal) will not usually be regarded as rendering it inadmissible.[700] Thus, in the *Certain Phosphate Lands in Nauru* case, ICJ held it to be sufficient that Nauru had referred to its claims in bilateral negotiations with Australia in the period preceding the formal institution of legal proceedings in 1989.[701] In the *Tagliaferro* case, Umpire Ralston likewise held that, despite the lapse of 31 years since the infliction of damage, the claim was admissible as it had been notified immediately after the injury had occurred.[702]

(11) To summarize, a claim will not be inadmissible on grounds of delay unless the circumstances are such that the injured State should be considered as having acquiesced in the lapse of the claim or the respondent State has been seriously disadvantaged. International courts generally engage in a flexible weighing of relevant circumstances in the given case, taking into account such matters as the conduct of the respondent State and the importance of the rights involved. The decisive factor is whether the respondent State has suffered any prejudice as a result of the delay in the sense that the respondent could have reasonably expected that the claim would no longer be pursued. Even if there has been some prejudice, it may be able to be taken into account in determining the form or extent of reparation.[703]

[696] In some cases time limits are laid down for specific categories of claims arising under specific treaties (e.g. the six-month time limit for individual applications under article 35, paragraph 1, of the European Convention on Human Rights) notably in the area of private law (e.g. in the field of commercial transactions and international transport). See the Convention on the Limitation Period in the International Sale of Goods, as amended by the Protocol to the Convention. By contrast, it is highly unusual for treaty provisions dealing with inter-State claims to be subject to any express time limits.

[697] Communiqué of 29 December 1970, in *Annuaire suisse de droit international*, vol. 32 (1976), p. 153.

[698] C.-A. Fleischhauer, "Prescription", *Encyclopedia of Public International Law* (see footnote 409 above), vol. 3, p. 1105, at p. 1107.

[699] A large number of international decisions stress the absence of general rules, and in particular of any specific limitation period measured in years. Rather, the principle of delay is a matter of appreciation having regard to the facts of the given case. Besides *Certain Phosphate Lands in Nauru* (footnotes 230 and 232 above), see, e.g. *Gentini* (footnote 694 above), p. 561; and the *Ambatielos* arbitration, ILR, vol. 23, p. 306, at pp. 314–317 (1956).

[700] For statements of the distinction between notice of claim and commencement of proceedings, see, e.g. R. Jennings and A. Watts, eds., *Oppenheim's International Law*, 9th ed. (Harlow, Longman, 1992), vol. I, *Peace*, p. 527; and C. Rousseau, *Droit international public* (Paris, Sirey, 1983), vol. V, p. 182.

[701] *Certain Phosphate Lands in Nauru, Preliminary Objections* (see footnote 230 above), p. 250, para. 20.

[702] *Tagliaferro* (see footnote 695 above), p. 593.

[703] See article 39 and commentary.

Article 46. Plurality of injured States

Where several States are injured by the same internationally wrongful act, each injured State may separately invoke the responsibility of the State which has committed the internationally wrongful act.

Commentary

(1) Article 46 deals with the situation of a plurality of injured States, in the sense defined in article 42. It states the principle that where there are several injured States, each of them may separately invoke the responsibility for the internationally wrongful act on its own account.

(2) Several States may qualify as "injured" States under article 42. For example, all the States to which an interdependent obligation is owed within the meaning of article 42, subparagraph (*b*) (ii), are injured by its breach. In a situation of a plurality of injured States, each may seek cessation of the wrongful act if it is continuing, and claim reparation in respect of the injury to itself. This conclusion has never been doubted, and is implicit in the terms of article 42 itself.

(3) It is by no means unusual for claims arising from the same internationally wrongful act to be brought by several States. For example, in the *S.S. "Wimbledon"* case, four States brought proceedings before PCIJ under article 386, paragraph 1, of the Treaty of Versailles, which allowed "any interested Power" to apply in the event of a violation of the provisions of the Treaty concerning transit through the Kiel Canal. The Court noted that "each of the four Applicant Powers has a clear interest in the execution of the provisions relating to the Kiel Canal, since they all possess fleets and merchant vessels flying their respective flags". It held they were each covered by article 386, paragraph 1, "even though they may be unable to adduce a prejudice to any pecuniary interest".[704] In fact, only France, representing the operator of the vessel, claimed and was awarded compensation. In the cases concerning the *Aerial Incident of 27 July 1955*, proceedings were commenced by the United States, the United Kingdom and Israel against Bulgaria concerning the destruction of an Israeli civil aircraft and the loss of lives involved.[705] In the *Nuclear Tests* cases, Australia and New Zealand each claimed to be injured in various ways by the French conduct of atmospheric nuclear tests at Mururoa Atoll.[706]

(4) Where the States concerned do not claim compensation on their own account as distinct from a declaration

[704] *S.S. "Wimbledon"* (see footnote 34 above), p. 20.

[705] ICJ held that it lacked jurisdiction over the Israeli claim: *Aerial Incident of 27 July 1955 (Israel* v. *Bulgaria), Judgment, I.C.J. Reports 1959*, p. 131, after which the United Kingdom and United States claims were withdrawn. In its Memorial, Israel noted that there had been active coordination of the claims between the various claimant Governments, and added: "One of the primary reasons for establishing coordination of this character from the earliest stages was to prevent, so far as was possible, the Bulgarian Government being faced with double claims leading to the possibility of double damages" (see footnote 363 above), p. 106.

[706] See *Nuclear Tests (Australia* v. *France)* and *(New Zealand* v. *France)* (footnote 196 above), pp. 256 and 460, respectively.

obligation but justified as a necessary and proportionate response to an internationally wrongful act of the State against which they are taken. They are essentially temporary measures, taken to achieve a specified end, whose justification terminates once the end is achieved.

(5) This chapter does not draw any distinction between what are sometimes called "reciprocal countermeasures" and other measures. That term refers to countermeasures which involve suspension of performance of obligations towards the responsible State "if such obligations correspond to, or are directly connected with, the obligation breached".[739] There is no requirement that States taking countermeasures should be limited to suspension of performance of the same or a closely related obligation.[740] A number of considerations support this conclusion. First, for some obligations, for example those concerning the protection of human rights, reciprocal countermeasures are inconceivable. The obligations in question have a non-reciprocal character and are not only due to other States but to the individuals themselves.[741] Secondly, a limitation to reciprocal countermeasures assumes that the injured State will be in a position to impose the same or related measures as the responsible State, which may not be so. The obligation may be a unilateral one or the injured State may already have performed its side of the bargain. Above all, considerations of good order and humanity preclude many measures of a reciprocal nature. This conclusion does not, however, end the matter. Countermeasures are more likely to satisfy the requirements of necessity and proportionality if they are taken in relation to the same or a closely related obligation, as in the *Air Service Agreement* arbitration.[742]

(6) This conclusion reinforces the need to ensure that countermeasures are strictly limited to the requirements of the situation and that there are adequate safeguards against abuse. Chapter II seeks to do this in a variety of ways. First, as already noted, it concerns only non-forcible countermeasures (art. 50, para. 1 (*a*)). Secondly, countermeasures are limited by the requirement that they be directed at the responsible State and not at third parties (art. 49, paras. 1 and 2). Thirdly, since countermeasures are intended as instrumental—in other words, since they are taken with a view to procuring cessation of and reparation for the internationally wrongful act and not by way of punishment—they are temporary in character and must be as far as possible reversible in their effects in terms of future legal relations between the two States (arts. 49, paras. 2 and 3, and 53). Fourthly, countermeasures must be proportionate (art. 51). Fifthly, they must not involve any departure from certain basic obligations (art. 50, para. 1), in particular those under peremptory norms of general international law.

(7) This chapter also deals to some extent with the conditions of the implementation of countermeasures. In particular, countermeasures cannot affect any dispute settlement procedure which is in force between the two States and applicable to the dispute (art. 50, para. 2 (*a*)). Nor can they be taken in such a way as to impair diplomatic or consular inviolability (art. 50, para. 2 (*b*)). Countermeasures must be preceded by a demand by the injured State that the responsible State comply with its obligations under Part Two, must be accompanied by an offer to negotiate, and must be suspended if the internationally wrongful act has ceased and the dispute is submitted in good faith to a court or tribunal with the authority to make decisions binding on the parties (art. 52, para. 3).

(8) The focus of the chapter is on countermeasures taken by injured States as defined in article 42. Occasions have arisen in practice of countermeasures being taken by other States, in particular those identified in article 48, where no State is injured or else on behalf of and at the request of an injured State. Such cases are controversial and the practice is embryonic. This chapter does not purport to regulate the taking of countermeasures by States other than the injured State. It is, however, without prejudice to the right of any State identified in article 48, paragraph 1, to take lawful measures against a responsible State to ensure cessation of the breach and reparation in the interest of the injured State or the beneficiaries of the obligation breached (art. 54).

(9) In common with other chapters of these articles, the provisions on countermeasures are residual and may be excluded or modified by a special rule to the contrary (see article 55). Thus, a treaty provision precluding the suspension of performance of an obligation under any circumstances will exclude countermeasures with respect to the performance of the obligation. Likewise, a regime for dispute resolution to which States must resort in the event of a dispute, especially if (as with the WTO dispute settlement system) it requires an authorization to take measures in the nature of countermeasures in response to a proven breach.[743]

Article 49. Object and limits of countermeasures

1. An injured State may only take countermeasures against a State which is responsible for an internationally wrongful act in order to induce that State to comply with its obligations under Part Two.

2. Countermeasures are limited to the non-performance for the time being of international obligations of the State taking the measures towards the responsible State.

3. Countermeasures shall, as far as possible, be taken in such a way as to permit the resumption of performance of the obligations in question.

[739] See the sixth report of the Special Rapporteur on State responsibility, William Riphagen, article 8 of Part Two of the draft articles, *Yearbook ... 1985*, vol. II (Part One), p. 10, document A/CN.4/389.

[740] Contrast the exception of non-performance in the law of treaties, which is so limited: see paragraph (9) of the introductory commentary to chapter V of Part One.

[741] Cf. *Ireland* v. *the United Kingdom* (footnote 236 above).

[742] See footnote 28 above.

[743] See Marrakesh Agreement establishing the World Trade Organization, annex 2 (Understanding on Rules and Procedures governing the Settlement of Disputes), arts. 1, 3, para. 7, and 22.

Commentary

(1) Article 49 describes the permissible object of countermeasures taken by an injured State against the responsible State and places certain limits on their scope. Countermeasures may only be taken by an injured State in order to induce the responsible State to comply with its obligations under Part Two, namely, to cease the internationally wrongful conduct, if it is continuing, and to provide reparation to the injured State.[744] Countermeasures are not intended as a form of punishment for wrongful conduct, but as an instrument for achieving compliance with the obligations of the responsible State under Part Two. The limited object and exceptional nature of countermeasures are indicated by the use of the word "only" in paragraph 1 of article 49.

(2) A fundamental prerequisite for any lawful countermeasure is the existence of an internationally wrongful act which injured the State taking the countermeasure. This point was clearly made by ICJ in the *Gabčíkovo Nagymaros Project* case, in the following passage:

> In order to be justifiable, a countermeasure must meet certain conditions …
>
> In the first place it must be taken in response to a previous international wrongful act of another State and must be directed against that State.[745]

(3) *Paragraph 1* of article 49 presupposes an objective standard for the taking of countermeasures, and in particular requires that the countermeasure be taken against a State which is responsible for an internationally wrongful act in order to induce that State to comply with its obligations of cessation and reparation. A State taking countermeasures acts at its peril, if its view of the question of wrongfulness turns out not to be well founded. A State which resorts to countermeasures based on its unilateral assessment of the situation does so at its own risk and may incur responsibility for its own wrongful conduct in the event of an incorrect assessment.[746] In this respect, there is no difference between countermeasures and other circumstances precluding wrongfulness.[747]

(4) A second essential element of countermeasures is that they "must be directed against"[748] a State which has committed an internationally wrongful act, and which has not complied with its obligations of cessation and reparation under Part Two of the present articles.[749] The word "only" in paragraph 1 applies equally to the target of the countermeasures as to their purpose and is intended to convey that countermeasures may only be adopted against a State which is the author of the internationally wrongful act. Countermeasures may not be directed against States other than the responsible State. In a situation where a third State is owed an international obligation by the State taking countermeasures and that obligation is breached by the countermeasure, the wrongfulness of the measure is not precluded as against the third State. In that sense the effect of countermeasures in precluding wrongfulness is relative. It concerns the legal relations between the injured State and the responsible State.[750]

(5) This does not mean that countermeasures may not incidentally affect the position of third States or indeed other third parties. For example, if the injured State suspends transit rights with the responsible State in accordance with this chapter, other parties, including third States, may be affected thereby. If they have no individual rights in the matter they cannot complain. The same is true if, as a consequence of suspension of a trade agreement, trade with the responsible State is affected and one or more companies lose business or even go bankrupt. Such indirect or collateral effects cannot be entirely avoided.

(6) In taking countermeasures, the injured State effectively withholds performance for the time being of one or more international obligations owed by it to the responsible State, and *paragraph 2* of article 49 reflects this element. Although countermeasures will normally take the form of the non-performance of a single obligation, it is possible that a particular measure may affect the performance of several obligations simultaneously. For this reason, paragraph 2 refers to "obligations" in the plural. For example, freezing of the assets of a State might involve what would otherwise be the breach of several obligations to that State under different agreements or arrangements. Different and coexisting obligations might be affected by the same act. The test is always that of proportionality, and a State which has committed an internationally wrongful act does not thereby make itself the target for any form or combination of countermeasures, irrespective of their severity or consequences.[751]

(7) The phrase "for the time being" in paragraph 2 indicates the temporary or provisional character of countermeasures. Their aim is the restoration of a condition of legality as between the injured State and the responsible

[744] For these obligations, see articles 30 and 31 and commentaries.

[745] *Gabčíkovo-Nagymaros Project* (see footnote 27 above), p. 55, para. 83. See also *"Naulilaa"* (footnote 337 above), p. 1027; *"Cysne"* (footnote 338 above), p. 1057. At the 1930 Hague Conference, all States which responded on this point took the view that a prior wrongful act was an indispensable prerequisite for the adoption of reprisals; see League of Nations, Conference for the Codification of International Law, *Bases of Discussion …* (footnote 88 above), p. 128.

[746] The tribunal's remark in the *Air Service Agreement* case (see footnote 28 above), to the effect that "each State establishes for itself its legal situation vis-à-vis other States" (p. 443, para. 81) should not be interpreted in the sense that the United States would have been justified in taking countermeasures whether or not France was in breach of the Agreement. In that case the tribunal went on to hold that the United States was actually responding to a breach of the Agreement by France, and that its response met the requirements for countermeasures under international law, in particular in terms of purpose and proportionality. The tribunal did not decide that an unjustified belief by the United States as to the existence of a breach would have been sufficient.

[747] See paragraph (8) of the introductory commentary to chapter V of Part One.

[748] *Gabčíkovo-Nagymaros Project* (see footnote 27 above), pp. 55–56, para. 83.

[749] In the *Gabčíkovo-Nagymaros Project* case ICJ held that the requirement had been satisfied, in that Hungary was in continuing breach of its obligations under a bilateral treaty, and Czechoslovakia's response was directed against it on that ground.

[750] On the specific question of human rights obligations, see article 50, paragraph (1) (*b*), and commentary.

[751] See article 51 and commentary. In addition, the performance of certain obligations may not be withheld by way of countermeasures in any circumstances: see article 50 and commentary.

State, and not the creation of new situations which cannot be rectified whatever the response of the latter State to the claims against it.[752] Countermeasures are taken as a form of inducement, not punishment: if they are effective in inducing the responsible State to comply with its obligations of cessation and reparation, they should be discontinued and performance of the obligation resumed.

(8) Paragraph 1 of article 49 refers to the obligations of the responsible State "under Part Two". It is to ensuring the performance of these obligations that countermeasures are directed. In many cases the main focus of countermeasures will be to ensure cessation of a continuing wrongful act, but they may also be taken to ensure reparation, provided the other conditions laid down in chapter II are satisfied. Any other conclusion would immunize from countermeasures a State responsible for an internationally wrongful act if the act had ceased, irrespective of the seriousness of the breach or its consequences, or of the State's refusal to make reparation for it. In this context an issue arises whether countermeasures should be available where there is a failure to provide satisfaction as demanded by the injured State, given the subsidiary role this remedy plays in the spectrum of reparation.[753] In normal situations, satisfaction will be symbolic or supplementary and it would be highly unlikely that a State which had ceased the wrongful act and tendered compensation to the injured State could properly be made the target of countermeasures for failing to provide satisfaction as well. This concern may be adequately addressed by the application of the notion of proportionality set out in article 51.[754]

(9) *Paragraph 3* of article 49 is inspired by article 72, paragraph 2, of the 1969 Vienna Convention, which provides that when a State suspends a treaty it must not, during the suspension, do anything to preclude the treaty from being brought back into force. By analogy, States should as far as possible choose countermeasures that are reversible. In the *Gabčíkovo-Nagymaros Project* case, the existence of this condition was recognized by the Court, although it found that it was not necessary to pronounce on the matter. After concluding that "the diversion of the Danube carried out by Czechoslovakia was not a lawful countermeasure because it was not proportionate", the Court said:

> It is therefore not required to pass upon one other condition for the lawfulness of a countermeasure, namely that its purpose must be to induce the wrongdoing State to comply with its obligations under international law, and that the measure must therefore be reversible.[755]

However, the duty to choose measures that are reversible is not absolute. It may not be possible in all cases to reverse all of the effects of countermeasures after the occasion for taking them has ceased. For example, a requirement of notification of some activity is of no value after the activity has been undertaken. By contrast, inflicting irreparable damage on the responsible State could amount to punishment or a sanction for non-compliance, not a countermeasure as conceived in the articles. The phrase "as far as possible" in paragraph 3 indicates that if the injured State has a choice between a number of lawful and effective countermeasures, it should select one which permits the resumption of performance of the obligations suspended as a result of countermeasures.

Article 50. Obligations not affected by countermeasures

1. Countermeasures shall not affect:

(*a*) the obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations;

(*b*) obligations for the protection of fundamental human rights;

(*c*) obligations of a humanitarian character prohibiting reprisals;

(*d*) other obligations under peremptory norms of general international law.

2. A State taking countermeasures is not relieved from fulfilling its obligations:

(*a*) under any dispute settlement procedure applicable between it and the responsible State;

(*b*) to respect the inviolability of diplomatic or consular agents, premises, archives and documents.

Commentary

(1) Article 50 specifies certain obligations the performance of which may not be impaired by countermeasures. An injured State is required to continue to respect these obligations in its relations with the responsible State, and may not rely on a breach by the responsible State of its obligations under Part Two to preclude the wrongfulness of any non-compliance with these obligations. So far as the law of countermeasures is concerned, they are sacrosanct.

(2) The obligations dealt with in article 50 fall into two basic categories. Paragraph 1 deals with certain obligations which, by reason of their character, must not be the subject of countermeasures at all. Paragraph 2 deals with certain obligations relating in particular to the maintenance of channels of communication between the two States concerned, including machinery for the resolution of their disputes.

(3) *Paragraph 1* of article 50 identifies four categories of fundamental substantive obligations which may not be affected by countermeasures: (*a*) the obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations; (*b*) obligations for the protection of fundamental human rights; (*c*) obligations of a humanitarian character prohibiting reprisals; and (*d*) other obligations under peremptory norms of general international law.

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[752] This notion is further emphasized by articles 49, paragraph 3, and 53 (termination of countermeasures).

[753] See paragraph (1) of the commentary to article 37.

[754] Similar considerations apply to assurances and guarantees of non-repetition. See article 30, subparagraph (*b*), and commentary.

[755] *Gabčíkovo-Nagymaros Project* (see footnote 27 above), pp. 56–57, para. 87.

make countermeasures unnecessary pending the decision of the tribunal. The reference to a "court or tribunal" is intended to refer to any third party dispute settlement procedure, whatever its designation. It does not, however, refer to political organs such as the Security Council. Nor does it refer to a tribunal with jurisdiction between a private party and the responsible State, even if the dispute between them has given rise to the controversy between the injured State and the responsible State. In such cases, however, the fact that the underlying dispute has been submitted to arbitration will be relevant for the purposes of articles 49 and 51, and only in exceptional cases will countermeasures be justified.[791]

(9) *Paragraph 4* of article 52 provides a further condition for the suspension of countermeasures under paragraph 3. It comprehends various possibilities, ranging from an initial refusal to cooperate in the procedure, for example by non-appearance, through non-compliance with a provisional measures order, whether or not it is formally binding, through to refusal to accept the final decision of the court or tribunal. This paragraph also applies to situations where a State party fails to cooperate in the establishment of the relevant tribunal or fails to appear before the tribunal once it is established. Under the circumstances of paragraph 4, the limitations to the taking of countermeasures under paragraph 3 do not apply.

Article 53. Termination of countermeasures

Countermeasures shall be terminated as soon as the responsible State has complied with its obligations under Part Two in relation to the internationally wrongful act.

Commentary

(1) Article 53 deals with the situation where the responsible State has complied with its obligations of cessation and reparation under Part Two in response to countermeasures taken by the injured State. Once the responsible State has complied with its obligations under Part Two, no ground is left for maintaining countermeasures, and they must be terminated forthwith.

(2) The notion that countermeasures must be terminated as soon as the conditions which justified them have ceased is implicit in the other articles in this chapter. In view of its importance, however, article 53 makes this clear. It underlines the specific character of countermeasures under article 49.

[791] Under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, the State of nationality may not bring an international claim on behalf of a claimant individual or company "in respect of a dispute which one of its nationals and another Contracting State shall have consented to submit or shall have submitted to arbitration under this Convention, unless such other Contracting State shall have failed to abide by and comply with the award rendered in such dispute" (art. 27, para. 1); see C. H. Schreuer, *The ICSID Convention A Commentary* (Cambridge University Press, 2001) pp. 397–414. This excludes all forms of invocation of responsibility by the State of nationality, including the taking of countermeasures. See paragraph (2) of the commentary to article 42.

Article 54. Measures taken by States other than an injured State

This chapter does not prejudice the right of any State, entitled under article 48, paragraph 1, to invoke the responsibility of another State, to take lawful measures against that State to ensure cessation of the breach and reparation in the interest of the injured State or of the beneficiaries of the obligation breached.

Commentary

(1) Chapter II deals with the right of an injured State to take countermeasures against a responsible State in order to induce that State to comply with its obligations of cessation and reparation. However, "injured" States, as defined in article 42, are not the only States entitled to invoke the responsibility of a State for an internationally wrongful act under chapter I of this Part. Article 48 allows such invocation by any State, in the case of the breach of an obligation to the international community as a whole, or by any member of a group of States, in the case of other obligations established for the protection of the collective interest of the group. By virtue of article 48, paragraph 2, such States may also demand cessation and performance in the interests of the beneficiaries of the obligation breached. Thus, with respect to the obligations referred to in article 48, such States are recognized as having a legal interest in compliance. The question is to what extent these States may legitimately assert a right to react against unremedied breaches.[792]

(2) It is vital for this purpose to distinguish between individual measures, whether taken by one State or by a group of States each acting in its individual capacity and through its own organs on the one hand, and institutional reactions in the framework of international organizations on the other. The latter situation, for example where it occurs under the authority of Chapter VII of the Charter of the United Nations, is not covered by the articles.[793] More generally, the articles do not cover the case where action is taken by an international organization, even though the member States may direct or control its conduct.[794]

(3) Practice on this subject is limited and rather embryonic. In a number of instances, States have reacted against what were alleged to be breaches of the obligations referred to in article 48 without claiming to be individually injured. Reactions have taken such forms as economic sanctions or other measures (e.g. breaking off air links or other contacts). Examples include the following:

[792] See, e.g., M. Akehurst, "Reprisals by third States", BYBIL, *1970*, vol. 44, p. 1; J. I. Charney, "Third State remedies in international law", *Michigan Journal of International Law*, vol. 10, No. 1 (1989), p. 57; Hutchinson, *loc. cit*. (footnote 672 above); Sicilianos, *op. cit.* (footnote 735 above), pp. 110–175; B. Simma, "From bilateralism to community interest in international law", *Collected Courses ..., 1994–VI* (The Hague, Martinus Nijhoff, 1997), vol. 250, p. 217; and J. A. Frowein, "Reactions by not directly affected States to breaches of public international law", *Collected Courses ..., 1994–IV* (Dordrecht, Martinus Nijhoff, 1995), vol. 248, p. 345.

[793] See article 59 and commentary.

[794] See article 57 and commentary.

• *United States-Uganda (1978).* In October 1978, the United States Congress adopted legislation prohibiting exports of goods and technology to, and all imports from, Uganda.[795] The legislation recited that "[t]he Government of Uganda … has committed genocide against Ugandans" and that the "United States should take steps to dissociate itself from any foreign government which engages in the international crime of genocide".[796]

• *Certain Western countries-Poland and the Soviet Union (1981).* On 13 December 1981, the Polish Government imposed martial law and subsequently suppressed demonstrations and detained many dissidents.[797] The United States and other Western countries took action against both Poland and the Soviet Union. The measures included the suspension, with immediate effect, of treaties providing for landing rights of Aeroflot in the United States and LOT in the United States, Great Britain, France, the Netherlands, Switzerland and Austria.[798] The suspension procedures provided for in the respective treaties were disregarded.[799]

• *Collective measures against Argentina (1982).* In April 1982, when Argentina took control over part of the Falkland Islands (Malvinas), the Security Council called for an immediate withdrawal.[800] Following a request by the United Kingdom, European Community members, Australia, Canada and New Zealand adopted trade sanctions. These included a temporary prohibition on all imports of Argentine products, which ran contrary to article XI:1 and possibly article III of the General Agreement on Tariffs and Trade. It was disputed whether the measures could be justified under the national security exception provided for in article XXI (*b*) (iii) of the Agreement.[801] The embargo adopted by the European countries also constituted a suspension of Argentina's rights under two sectoral agreements on trade in textiles and trade in mutton and lamb,[802] for which security exceptions of the Agreement did not apply.

• *United States-South Africa (1986).* When in 1985, the Government of South Africa declared a state of emergency in large parts of the country, the Security Council recommended the adoption of sectoral economic boycotts and the freezing of cultural and sports relations.[803] Subsequently, some countries introduced measures which went beyond those recommended by the Security Council. The United States Congress adopted the Comprehensive Anti-Apartheid Act which suspended landing rights of South African Airlines on United States territory.[804] This immediate suspension was contrary to the terms of the 1947 United States of America and Union of South Africa Agreement relating to air services between their respective territories[805] and was justified as a measure which should encourage the Government of South Africa "to adopt reforms leading to the establishment of a non-racial democracy".[806]

• *Collective measures against Iraq (1990)*. On 2 August 1990, Iraqi troops invaded and occupied Kuwait. The Security Council immediately condemned the invasion. European Community member States and the United States adopted trade embargoes and decided to freeze Iraqi assets.[807] This action was taken in direct response to the Iraqi invasion with the consent of the Government of Kuwait.

• C*ollective measures against the Federal Republic of Yugoslavia (1998)*. In response to the humanitarian crisis in Kosovo, the member States of the European Community adopted legislation providing for the freezing of Yugoslav funds and an immediate flight ban.[808] For a number of countries, such as France, Germany and the United Kingdom, the latter measure implied the non-performance of bilateral aviation agreements.[809] Because of doubts about the legitimacy of the action, the British Government initially was prepared to follow the one-year denunciation procedure provided for in article 17 of its agreement with Yugoslavia. However, it later changed its position and denounced flights with immediate effect. Justifying the measure, it stated that "President Milosevic's ... worsening record on human rights means that, on moral and political grounds, he has forfeited the right of his Government to insist upon the 12 months notice which would normally ap-

[795] Uganda Embargo Act, Public Law 95-435 of 10 October 1978, *United States Statutes at Large 1978*, vol. 92, part 1 (Washington, D.C., United States Government Printing Office, 1980), pp. 1051–1053.

[796] *Ibid*., sects. 5(*a*) and (*b*).

[797] RGDIP, vol. 86 (1982), pp. 603–604.

[798] *Ibid*., p. 606.

[799] See, e.g., article 15 of the Air Transport Agreement between the Government of the United States of America and the Government of the Polish People's Republic of 1972 (*United States Treaties and Other International Agreements*, vol. 23, part 4 (1972), p. 4269); and article 17 of the United States-Union of Soviet Socialist Republics Civil Air Transport Agreement of 1966, ILM, vol. 6, No. 1 (January 1967), p. 82 and vol. 7, No. 3 (May 1968), p. 571.

[800] Security Council resolution 502 (1982) of 3 April 1982.

[801] Western States' reliance on this provision was disputed by other GATT members; cf. communiqué of Western countries, GATT document L. 5319/Rev.1 and the statements by Spain and Brazil, GATT document C/M/157, pp. 5–6. For an analysis, see M. J. Hahn, *Die einseitige Aussetzung von GATT-Verpflichtungen als Repressalie* (Unilateral Suspension of GATT Obligations as Reprisal (English summary)) (Berlin, Springer, 1996), pp. 328–334.

[802] The treaties are reproduced in *Official Journal of the European Communities*, No. L 298 of 26 November 1979, p. 2; and No. L 275 of 18 October 1980, p. 14.

[803] Security Council resolution 569 (1985) of 26 July 1985. For further references, see Sicilianos, *op. cit.* (footnote 735 above), p. 165.

[804] For the text of this provision, see ILM, vol. 26, No. 1 (January 1987), p. 79 (sect. 306).

[805] United Nations, *Treaty Series*, vol. 66, p. 239 (art. VI).

[806] For the implementation order, see ILM (footnote 804 above), p. 105.

[807] See, e.g., President Bush's Executive Orders of 2 August 1990, reproduced in AJIL, vol. 84, No. 4 (October 1990), pp. 903–905.

[808] Common positions of 7 May and 29 June 1998, *Official Journal of the European Communities*, No. L 143 of 14 May 1998, p. 1 and No. L 190 of 4 July 1998, p. 3; implemented through Council Regulations 1295/98, *ibid*., No. L 178 of 23 June 1998, p. 33 and 1901/98, *ibid.*, No. L 248 of 8 September 1998, p. 1.

[809] See, e.g., United Kingdom, *Treaty Series* No. 10 (1960) (London, HM Stationery Office, 1960); and *Recueil des Traités et Accords de la France*, 1967, No. 69.

ply".[810] The Federal Republic of Yugoslavia protested these measures as "unlawful, unilateral and an example of the policy of discrimination".[811]

(4) In some other cases, certain States similarly suspended treaty rights in order to exercise pressure on States violating collective obligations. However, they did not rely on a right to take countermeasures, but asserted a right to suspend the treaty because of a fundamental change of circumstances. Two examples may be given:

• *Netherlands-Suriname (1982).* In 1980, a military Government seized power in Suriname. In response to a crackdown by the new Government on opposition movements in December 1982, the Dutch Government suspended a bilateral treaty on development assistance under which Suriname was entitled to financial subsidies.[812] While the treaty itself did not contain any suspension or termination clauses, the Dutch Government stated that the human rights violations in Suriname constituted a fundamental change of circumstances which gave rise to a right of suspension.[813]

• *European Community member States-the Federal Republic of Yugoslavia (1991).* In the autumn of 1991, in response to resumption of fighting within the Federal Republic of Yugoslavia, European Community members suspended and later denounced the 1983 Cooperation Agreement with Yugoslavia.[814] This led to a general repeal of trade preferences on imports and thus went beyond the weapons embargo ordered by the Security Council in resolution 713 (1991) of 25 September 1991. The reaction was incompatible with the terms of the Cooperation Agreement, which did not provide for the immediate suspension but only for denunciation upon six months' notice. Justifying the suspension, European Community member States explicitly mentioned the threat to peace and security in the region. But as in the case of Suriname, they relied on fundamental change of circumstances, rather than asserting a right to take countermeasures.[815]

(5) In some cases, there has been an apparent willingness on the part of some States to respond to violations of obligations involving some general interest, where those States could not be considered "injured States" in the sense of article 42. It should be noted that in those cases where there was, identifiably, a State primarily injured by the breach in question, other States have acted at the request and on behalf of that State.[816]

(6) As this review demonstrates, the current state of international law on countermeasures taken in the general or collective interest is uncertain. State practice is sparse and involves a limited number of States. At present, there appears to be no clearly recognized entitlement of States referred to in article 48 to take countermeasures in the collective interest. Consequently, it is not appropriate to include in the present articles a provision concerning the question whether other States, identified in article 48, are permitted to take countermeasures in order to induce a responsible State to comply with its obligations. Instead, chapter II includes a saving clause which reserves the position and leaves the resolution of the matter to the further development of international law.

(7) Article 54 accordingly provides that the chapter on countermeasures does not prejudice the right of any State, entitled under article 48, paragraph 1, to invoke the responsibility of another State, to take lawful measures against the responsible State to ensure cessation of the breach and reparation in the interest of the injured State or the beneficiaries of the obligation breached. The article speaks of "lawful measures" rather than "countermeasures" so as not to prejudice any position concerning measures taken by States other than the injured State in response to breaches of obligations for the protection of the collective interest or those owed to the international community as a whole.

Part Four

GENERAL PROVISIONS

This Part contains a number of general provisions applicable to the articles as a whole, specifying either their scope or certain matters not dealt with. First, article 55 makes it clear by reference to the *lex specialis* principle that the articles have a residual character. Where some matter otherwise dealt with in the articles is governed by a special rule of international law, the latter will prevail to the extent of any inconsistency. Correlatively, article 56 makes it clear that the articles are not exhaustive, and that they do not affect other applicable rules of international law on matters not dealt with. There follow three saving clauses. Article 57 excludes from the scope of the articles questions concerning the responsibility of international organizations and of States for the acts of international organizations. The articles are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of a State, and this is made clear by article 58. Finally, article 59 reserves the effects of the Charter of the United Nations itself.

[810] BYBIL, *1998*, vol. 69, p. 581; see also BYBIL, *1999*, vol. 70, pp. 555–556.

[811] Statement of the Government of the Federal Republic of Yugoslavia on the suspension of flights of Yugoslav Airlines of 10 October 1998. See M. Weller, *The Crisis in Kosovo 1989-1999* (Cambridge, Documents & Analysis Publishing, 1999), p. 227.

[812] *Tractatenblad van het Koninkrijk der Nederlanden*, No. 140 (1975). See H.-H. Lindemann, "The repercussions resulting from the violation of human rights in Surinam on the contractual relations between the Netherlands and Surinam", *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, vol. 44 (1984), p. 64, at pp. 68–69.

[813] R. C. R. Siekmann, "Netherlands State practice for the parliamentary year 1982–1983", NYIL, 1984, vol. 15, p. 321.

[814] *Official Journal of the European Communities*, No. L 41 of 14 February 1983, p. 1; No. L 315 of 15 November 1991, p. 1, for the suspension; and No. L 325 of 27 November 1991, p. 23, for the denunciation.

[815] See also the decision of the European Court of Justice in *A. Racke GmbH and Co.* v. *Hauptzollamt Mainz*, case C-162/96, *Reports of cases before the Court of Justice and the Court of First Instance*, 1998-6, p. I–3655, at pp. 3706–3708, paras. 53–59.

[816] Cf. *Military and Paramilitary Activities in and against Nicaragua* (footnote 36 above) where ICJ noted that action by way of collective self-defence could not be taken by a third State except at the request of the State subjected to the armed attack (p. 105, para. 199).

Annex 70

UNSG, Summary Statement by the Secretary-General on matters of which the Security Council is seized and on the stage reached in their consideration, UN doc. S/2002/30/Add.49, 20 December 2002 [extract]

Available at:

http://undocs.org/S/2002/30/Add.49

French version available at:

http://undocs.org/fr/S/2002/30/Add.49

United Nations S/2002/30/Add.49

Security Council

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Summary statement by the Secretary-General on matters of which the Security Council is seized and on the stage reached in their consideration

Addendum

Pursuant to rule 11 of the provisional rules of procedure of the Security Council, the Secretary-General is submitting the following summary statement.

The list of items of which the Security Council is seized is contained in documents S/2002/30 of 15 March 2002, S/2002/30/Add.1 of 22 March 2002, S/2002/30/Add.2 of 25 March 2002, S/2002/30/Add.3 of 26 March 2002, S/2002/30/Add.5 of 1 April 2002, S/2002/30/Add.13 of 9 April 2002, S/2002/30/Add.23 of 21 June 2002, S/2002/30/Add.27 of 19 July 2002, S/2002/30/Add.36 of 20 September 2002, S/2002/30/Add.42 of 1 November 2002 and S/2002/30/Add.48 of 13 December 2002.

During the week ending 14 December 2002, the Security Council took action on the following items:

The situation in Angola (*see* S/25070/Add.4, 10, 17, 22, 23, 28, 37, 44 and 50; S/1994/20/Add.5, 10, 21, 25, 31, 35, 38, 42, 43 and 48; S/1995/40/Add.5, 9, 14, 18, 31, 40 and 50; S/1996/15/Add.5, 16, 18, 27, 40 and 49; S/1997/40/Add.4, 8, 11, 12, 15, 26, 29, 34, 39 and 43; S/1998/44/Add.4, 11, 17, 20, 23, 25, 26, 32, 37, 41, 48, 51 and 52; S/1999/25/Add.1, 2, 7, 17, 19, 29, 33 and 40; S/2000/40/Add.2, 10, 14, 15 and 29; S/2001/15/Add.4, 8, 16, 38, 42, 46 and 51; and S/2002/30/Add.6, 12, 15, 16, 19, 28, 31, 32 and 41; *see also* S/19420/Add.51; S/22110/Add.21; and S/23370/Add.12, 27, 37, 40, 43, 48 and 51)

The Security Council resumed its consideration of the item at its 4657th meeting, held on 9 December 2002 in accordance with the understanding reached in its prior consultations.

The President, with the consent of the Council, invited the representative of Angola, at his request, to participate in the discussion without the right to vote.

The President drew attention to a draft resolution (S/2002/1331) that had been prepared in the course of the Council's prior consultations.

The Council proceeded to vote on draft resolution S/2002/1331, and adopted it unanimously as resolution 1448 (2002) (for the text, see S/RES/1448 (2002); to be issued in *Official Records of the Security Council, Resolutions and Decisions of the Security Council, 1 August 2002-31 July 2003*).

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The situation in the Central African Republic (*see* S/1997/40/Add.31 and 44; S/1998/44/Add.5, 11, 12, 28 and 41; S/1999/25/Add.6, 7 and 41; S/2000/40/Add.5; S/2001/15/Add.4, 29, 38 and 39; and S/2002/30/Add.27 and 41)

The Security Council resumed its consideration of the item at its 4658th (private) meeting, held on 9 December 2002 in accordance with the understanding reached in its prior consultations.

At the close of the 4658th meeting, in accordance with rule 55 of the provisional rules of procedure of the Council, the following communiqué was issued through the Secretary-General in place of a verbatim record:

> "At its 4658th meeting, held in private on 9 December 2002, the Security Council considered the item entitled 'The situation in the Central African Republic'.
>
> "The President, with the consent of the Council, invited the distinguished Prime Minister of the Central African Republic, His Excellency, Mr. Martin Ziguele, to participate in the discussion of the item without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.
>
> "The members of the Council and the Prime Minister of the Central African Republic had a constructive discussion."

Letter dated 29 November 2002 from the Permanent Representative of Chad to the United Nations addressed to the President of the Security Council (S/2002/1317) (*see also* S/1997/40/Add.31 and 44; S/1998/44/Add.5, 11, 12, 28 and 41; S/1999/25/Add.6, 7 and 41; S/2000/40/Add.5; S/2001/15/Add.4, 29, 38 and 39; and S/2002/30/Add.27 and 41)

The Security Council met to consider the item at its 4659th (private) meeting, held on 9 December 2002 in accordance with the understanding reached in its prior consultations.

At the close of the 4659th meeting, in accordance with rule 55 of the provisional rules of procedure of the Council, the following communiqué was issued through the Secretary-General in place of a verbatim record:

> "At its 4659th meeting, held in private on 9 December 2002, the Security Council considered the item entitled 'Letter dated 29 November 2002 from the Permanent Representative of Chad to the United Nations addressed to the President of the Security Council (S/2002/1317)'.
>
> "The President, with the consent of the Council, invited the representative of Chad, at his request, to participate in the discussion of the item without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.
>
> "The members of the Council and the representative of Chad had a constructive discussion."

Annex 70

Protection of civilians in armed conflict (*see* S/1999/25/Add.5, 7 and 36; S/2000/40/Add.15; S/2001/15/Add.17 and 47; and S/2002/30/Add.10)

The Security Council resumed its consideration of the item at its 4660th meeting, held on 10 December 2002 in accordance with the understanding reached in its prior consultations, having before it the report of the Secretary-General to the Security Council on the protection of civilians in armed conflict (S/2002/1300). There was one suspension and one resumption of the meeting.

The President, with the consent of the Council, invited the representatives of Argentina, Austria, Bangladesh, Burkina Faso, Cambodia, Canada, Chile, Denmark, Egypt, Indonesia, Israel, Japan, the Republic of Korea, Switzerland, Timor-Leste and Ukraine, at their request, to participate in the discussion without the right to vote.

In accordance with the understanding reached in the Council's prior consultations, the President, with the consent of the Council, extended invitations under rule 39 of the Council's provisional rules of procedure to Kenzo Oshima, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, and to Angelo Gnaedinger, Director-General of the International Committee of the Red Cross.

The meeting was suspended.

Upon the resumption of the meeting, in response to the request contained in a letter dated 10 December 2002 from the Permanent Observer of Palestine to the United Nations addressed to the President of the Security Council (S/2002/1346), the President, in accordance with the rules of procedure and the previous practice in that regard, invited the Permanent Observer of Palestine to participate in the discussion.

The situation in Bosnia and Herzegovina (*see* S/23370/Add.36, 40, 43 and 45; S/25070/Add.1, 4, 7-9, 11-13, 15, 16, 18, 19, 22, 23, 24 and Corr.1, 26, 29, 34, 37 and 45; S/1994/20 and Add.4, 6, 8, 10, 13-17, 20, 21, 23, 25, 34, 37, 38, 44-47 and 49; S/1995/40 and Add.1, 6, 14, 15, 17, 18, 24, 26-29, 31, 35-37, 40 and 47-50; S/1996/15/Add.13, 31, 40 and 49; S/1997/40/Add.6, 10, 12, 19, 23 and 50; S/1998/44/Add.11, 20, 24 and 28; S/1999/25/Add.23, 30, 42, 44 and 45; S/2000/40/Add.11, 18, 23, 24, 27, 32, 42, 45 and 49; S/2001/15/Add.12, 24, 25, 38 and 49; and S/2002/30/Add.9, 24, 26, 27 and 42; *see also* S/22110/Add.38, 47 and 50; S/23370/Add.1, 5, 7, 14, 16, 19, 21, 23, 24, 26, 28, 29, 31, 32, 35, 37, 40, 46, 49 and 50; S/25070/Add.4, 8, 13, 17, 19, 21, 24 and Corr.1, 26, 28, 30, 32, 33, 37 and 39-42; S/1994/20/Add.12, 26, 31, 45 and 49; S/1995/40/Add.2, 5, 12, 16, 18, 19, 23, 30, 32, 39, 44, 46, 47 and 50; S/1996/15/Add.1, 2, 4, 6-8, 18, 20, 21, 26, 28, 30, 32, 37, 39, 45, 47 and 50; S/1997/40/Add.2, 4, 9, 11, 14, 16, 18, 21, 28, 34, 37, 42, 47, 48 and 50; S/1998/44/Add.2, 6, 9, 19, 26, 29, 34, 44 and 46; S/1999/25/Add.1-3, 7, 11, 17, 18, 22, 27, 31, 43 and 51; S/2000/40/Add.1, 8, 21, 24, 27, 46 and 47; S/2001/15/Add.2, 3, 6, 17, 28 and 48; and S/2002/30/Add.2, 19, 23, 29, 40 and 43)

The Security Council resumed its consideration of the item at its 4661st meeting, held on 12 December 2002 in accordance with the understanding reached in its prior consultations, having before it the report of the Secretary-General on the United Nations Mission in Bosnia and Herzegovina (S/2002/1314).

In accordance with the understanding reached in the Council's prior consultations, the President, with the consent of the Council, extended invitations under rule 37 of the Council's provisional rules of procedure to Mirko Šarović, Presiding Member of the Presidency of Bosnia and Herzegovina, Sulejman Tihić, Member of the Presidency of Bosnia and Herzegovina, Dragan Cović, Member of the Presidency of Bosnia and Herzegovina, and Dragan Mikerević, Prime Minister of Bosnia and Herzegovina.

In accordance with the understanding reached in the Council's prior consultations, the President, with the consent of the Council, extended an invitation under rule 39 of the Council's provisional rules of procedure to Jacques Paul Klein, Special Representative of the Secretary-General and Coordinator of United Nations Operations in Bosnia and Herzegovina.

The President stated that, following consultations of the Council, he had been authorized to make a statement on behalf of the Council and read out the text of that statement (for the text, see S/PRST/2002/33; to be issued in *Official Records of the Security Council, Resolutions and Decisions of the Security Council, 1 August 2002-31 July 2003*).

The situation in Croatia (*see* S/25070/Add.37; S/1995/40/Add.5, 16, 17, 19, 23, 30, 31, 35, 39, 46 and 50; S/1996/15/Add.1, 2, 4, 7, 20, 26, 28, 30, 32, 45 and 50; S/1997/40/Add.2, 4, 9, 11, 16, 18, 28, 37, 42 and 50; S/1998/44/Add.2, 6, 9, 26, 28 and 44; S/1999/25/Add.1 and 27; S/2000/40/Add.1 and 27; S/2001/15/Add.2 and 28; and S/2002/30/Add.2, 27 and 40; *see also* S/22110/Add.38, 47 and 50; S/23370/Add.1, 5, 7, 14, 16, 19, 21, 23, 24, 26, 28, 29, 31, 32, 35-37, 40, 43, 45, 46, 49 and 50; S/25070/Add.1, 4, 7-9, 11-13, 15-19, 21-23, 24 and Corr.1, 26, 28-30, 32-34, 37, 39-42 and 45; S/1994/20 and Add.4, 6, 8, 10, 12-17, 20, 21, 23, 25, 26, 31, 34, 37, 38, 44-47 and 49; S/1995/40 and Add.1, 2, 6, 12, 14, 15, 18, 24, 26-29, 32, 36, 37, 40, 44 and 47-50; S/1996/15/Add.6, 8, 13, 18, 21, 31, 37, 39, 40, 47 and 49; S/1997/40/Add.6, 10, 12, 14, 19, 21, 23, 34, 47 and 48; S/1998/44/Add.11, 19, 20, 24, 29, 34 and 46; S/1999/25/Add.2, 3, 7, 11, 17, 18, 22, 23, 30, 31, 42-45 and 51; S/2000/40/Add.8, 11, 18, 21, 23, 24, 27, 32, 42, 45-47 and 49; S/2001/15/Add.3, 6, 12, 17, 24, 25, 38, 48 and 49; and S/2002/30/Add.1, 9, 19, 24, 26, 29, 42 and 43)

The Security Council resumed its consideration of the item at its 4662nd meeting, held on 12 December 2002 in accordance with the understanding reached in its prior consultations, having before it the report of the Secretary-General on the United Nations Mission of Observers in Prevlaka (S/2002/1341).

The President, with the consent of the Council, invited the representative of Croatia, at her request, to participate in the discussion without the right to vote.

In accordance with the understanding reached in the Council's prior consultations, the President, with the consent of the Council, extended an invitation under rule 39 of the Council's provisional rules of procedure to Jean-Marie Guéhenno, Under-Secretary-General for Peacekeeping Operations.

The President stated that, following consultations of the Council, he had been authorized to make a statement on behalf of the Council and read out the text of that statement (for the text, see S/PRST/2002/34; to be issued in *Official Records of the Security Council, Resolutions and Decisions of the Security Council, 1 August 2002-31 July 2003*).

Annex 71

ILC, Draft articles on the responsibility of international organizations, adopted by the International Law Commission at its sixty-third session, *Yearbook of the International Law Commission*, 2011, vol. II, Part Two [extract]

Available at:

https://legal.un.org/ilc/publications/yearbooks/english/ilc_2011_v2_p2.pdf

French version available at:

https://legal.un.org/ilc/publications/yearbooks/french/ilc_2011_v2_p2.pdf

A/CN.4/SER.A/2011/Add.1 (Part 2)

YEARBOOK OF THE INTERNATIONAL LAW COMMISSION

2011

Volume II
Part Two

Report of the Commission to the General Assembly on the work of its sixty-third session

UNITED NATIONS

(*a*) to take note of the draft articles on the responsibility of international organizations in a resolution, and to annex them to the resolution;

(*b*) to consider, at a later stage, the elaboration of a convention on the basis of the draft articles.

D. Tribute to the Special Rapporteur

86. At its 3118th meeting, held on 5 August 2011, the Commission, after adopting the draft articles on the responsibility of international organizations, adopted the following resolution by acclamation:

"*The International Law Commission*,

"*Having adopted* the draft articles on the responsibility of international organizations,

"*Expresses* to the Special Rapporteur, Mr. Giorgio Gaja, its deep appreciation and warm congratulations for the outstanding contribution he has made to the preparation of the draft articles through his tireless efforts and devoted work, and for the results achieved in the elaboration of draft articles on the responsibility of international organizations."

E. Text of the draft articles on the responsibility of international organizations

1. Text of the draft articles

87. The text of the draft articles adopted by the Commission, on second reading, at its sixty-third session is reproduced below.

RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS

Part One

INTRODUCTION

Article 1. Scope of the present draft articles

1. The present draft articles apply to the international responsibility of an international organization for an internationally wrongful act.

2. The present draft articles also apply to the international responsibility of a State for an internationally wrongful act in connection with the conduct of an international organization.

Article 2. Use of terms

For the purposes of the present draft articles:

(*a*) "international organization" means an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to States, other entities;

(*b*) "rules of the organization" means, in particular, the constituent instruments, decisions, resolutions and other acts of the international organization adopted in accordance with those instruments, and established practice of the organization;

(*c*) "organ of an international organization" means any person or entity which has that status in accordance with the rules of the organization;

(*d*) "agent of an international organization" means an official or other person or entity, other than an organ, who is charged by the organization with carrying out, or helping to carry out, one of its functions, and thus through whom the organization acts.

Part Two

THE INTERNATIONALLY WRONGFUL ACT OF AN INTERNATIONAL ORGANIZATION

Chapter I

GENERAL PRINCIPLES

Article 3. Responsibility of an international organization for its internationally wrongful acts

Every internationally wrongful act of an international organization entails the international responsibility of that organization.

Article 4. Elements of an internationally wrongful act of an international organization

There is an internationally wrongful act of an international organization when conduct consisting of an action or omission:

(*a*) is attributable to that organization under international law; and

(*b*) constitutes a breach of an international obligation of that organization.

Article 5. Characterization of an act of an international organization as internationally wrongful

The characterization of an act of an international organization as internationally wrongful is governed by international law.

Chapter II

ATTRIBUTION OF CONDUCT TO AN INTERNATIONAL ORGANIZATION

Article 6. Conduct of organs or agents of an international organization

1. The conduct of an organ or agent of an international organization in the performance of functions of that organ or agent shall be considered an act of that organization under international law, whatever position the organ or agent holds in respect of the organization.

2. The rules of the organization apply in the determination of the functions of its organs and agents.

Article 7. Conduct of organs of a State or organs or agents of an international organization placed at the disposal of another international organization

The conduct of an organ of a State or an organ or agent of an international organization that is placed at the disposal of another international organization shall be considered under international law an act of the latter organization if the organization exercises effective control over that conduct.

Article 8. Excess of authority or contravention of instructions

The conduct of an organ or agent of an international organization shall be considered an act of that organization under international law if the organ or agent acts in an official capacity and within the overall functions of that organization, even if the conduct exceeds the authority of that organ or agent or contravenes instructions.

Article 9. Conduct acknowledged and adopted by an international organization as its own

Conduct which is not attributable to an international organization under articles 6 to 8 shall nevertheless be considered an act of that organization under international law if and to the extent that the organization acknowledges and adopts the conduct in question as its own.

CHAPTER III

BREACH OF AN INTERNATIONAL OBLIGATION

Article 10. Existence of a breach of an international obligation

1. There is a breach of an international obligation by an international organization when an act of that international organization is not in conformity with what is required of it by that obligation, regardless of the origin or character of the obligation concerned.

2. Paragraph 1 includes the breach of any international obligation that may arise for an international organization towards its members under the rules of the organization.

Article 11. International obligation in force for an international organization

An act of an international organization does not constitute a breach of an international obligation unless the organization is bound by the obligation in question at the time the act occurs.

Article 12. Extension in time of the breach of an international obligation

1. The breach of an international obligation by an act of an international organization not having a continuing character occurs at the moment when the act is performed, even if its effects continue.

2. The breach of an international obligation by an act of an international organization having a continuing character extends over the entire period during which the act continues and remains not in conformity with that obligation.

3. The breach of an international obligation requiring an international organization to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.

Article 13. Breach consisting of a composite act

1. The breach of an international obligation by an international organization through a series of actions and omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.

2. In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.

CHAPTER IV

RESPONSIBILITY OF AN INTERNATIONAL ORGANIZATION IN CONNECTION WITH THE ACT OF A STATE OR ANOTHER INTERNATIONAL ORGANIZATION

Article 14. Aid or assistance in the commission of an internationally wrongful act

An international organization which aids or assists a State or another international organization in the commission of an internationally wrongful act by the State or the latter organization is internationally responsible for doing so if:

(*a*) the former organization does so with knowledge of the circumstances of the internationally wrongful act; and

(*b*) the act would be internationally wrongful if committed by that organization.

Article 15. Direction and control exercised over the commission of an internationally wrongful act

An international organization which directs and controls a State or another international organization in the commission of an internationally wrongful act by the State or the latter organization is internationally responsible for that act if:

(*a*) the former organization does so with knowledge of the circumstances of the internationally wrongful act; and

(*b*) the act would be internationally wrongful if committed by that organization.

Article 16. Coercion of a State or another international organization

An international organization which coerces a State or another international organization to commit an act is internationally responsible for that act if:

(*a*) the act would, but for the coercion, be an internationally wrongful act of the coerced State or international organization; and

(*b*) the coercing international organization does so with knowledge of the circumstances of the act.

Article 17. Circumvention of international obligations through decisions and authorizations addressed to members

1. An international organization incurs international responsibility if it circumvents one of its international obligations by adopting a decision binding member States or international organizations to commit an act that would be internationally wrongful if committed by the former organization.

2. An international organization incurs international responsibility if it circumvents one of its international obligations by authorizing member States or international organizations to commit an act that would be internationally wrongful if committed by the former organization and the act in question is committed because of that authorization.

3. Paragraphs 1 and 2 apply whether or not the act in question is internationally wrongful for the member States or international organizations to which the decision or authorization is addressed.

Article 18. Responsibility of an international organization member of another international organization

Without prejudice to articles 14 to 17, the international responsibility of an international organization that is a member of another international organization also arises in relation to an act of the latter under the conditions set out in articles 61 and 62 for States that are members of an international organization.

Article 19. Effect of this chapter

This chapter is without prejudice to the international responsibility of the State or international organization which commits the act in question, or of any other State or international organization.

CHAPTER V

CIRCUMSTANCES PRECLUDING WRONGFULNESS

Article 20. Consent

Valid consent by a State or an international organization to the commission of a given act by another international organization precludes the wrongfulness of that act in relation to that State or the former organization to the extent that the act remains within the limits of that consent.

Article 21. Self-defence

The wrongfulness of an act of an international organization is precluded if and to the extent that the act constitutes a lawful measure of self-defence under international law.

Article 22. Countermeasures

1. Subject to paragraphs 2 and 3, the wrongfulness of an act of an international organization not in conformity with an international obligation towards a State or another international

organization is precluded if and to the extent that the act constitutes a countermeasure taken in accordance with the substantive and procedural conditions required by international law, including those set forth in chapter II of Part Four for countermeasures taken against another international organization.

2. Subject to paragraph 3, an international organization may not take countermeasures against a responsible member State or international organization unless:

(*a*) the conditions referred to in paragraph 1 are met;

(*b*) the countermeasures are not inconsistent with the rules of the organization; and

(*c*) no appropriate means are available for otherwise inducing compliance with the obligations of the responsible State or international organization concerning cessation of the breach and reparation.

3. Countermeasures may not be taken by an international organization against a member State or international organization in response to a breach of an international obligation under the rules of the organization unless such countermeasures are provided for by those rules.

Article 23. **Force majeure**

1. The wrongfulness of an act of an international organization not in conformity with an international obligation of that organization is precluded if the act is due to *force majeure*, that is, the occurrence of an irresistible force or of an unforeseen event, beyond the control of the organization, making it materially impossible in the circumstances to perform the obligation.

2. Paragraph 1 does not apply if:

(*a*) the situation of *force majeure* is due, either alone or in combination with other factors, to the conduct of the organization invoking it; or

(*b*) the organization has assumed the risk of that situation occurring.

Article 24. Distress

1. The wrongfulness of an act of an international organization not in conformity with an international obligation of that organization is precluded if the author of the act in question has no other reasonable way, in a situation of distress, of saving the author's life or the lives of other persons entrusted to the author's care.

2. Paragraph 1 does not apply if:

(*a*) the situation of distress is due, either alone or in combination with other factors, to the conduct of the organization invoking it; or

(*b*) the act in question is likely to create a comparable or greater peril.

Article 25. Necessity

1. Necessity may not be invoked by an international organization as a ground for precluding the wrongfulness of an act not in conformity with an international obligation of that organization unless the act:

(*a*) is the only means for the organization to safeguard against a grave and imminent peril an essential interest of its member States or of the international community as a whole, when the organization has, in accordance with international law, the function to protect the interest in question; and

(*b*) does not seriously impair an essential interest of the State or States towards which the international obligation exists, or of the international community as a whole.

2. In any case, necessity may not be invoked by an international organization as a ground for precluding wrongfulness if:

(*a*) the international obligation in question excludes the possibility of invoking necessity; or

(*b*) the organization has contributed to the situation of necessity.

Article 26. Compliance with peremptory norms

Nothing in this chapter precludes the wrongfulness of any act of an international organization which is not in conformity with an obligation arising under a peremptory norm of general international law.

Article 27. Consequences of invoking a circumstance precluding wrongfulness

The invocation of a circumstance precluding wrongfulness in accordance with this chapter is without prejudice to:

(*a*) compliance with the obligation in question, if and to the extent that the circumstance precluding wrongfulness no longer exists;

(*b*) the question of compensation for any material loss caused by the act in question.

PART THREE

CONTENT OF THE INTERNATIONAL RESPONSIBILITY OF AN INTERNATIONAL ORGANIZATION

CHAPTER I

GENERAL PRINCIPLES

Article 28. Legal consequences of an internationally wrongful act

The international responsibility of an international organization which is entailed by an internationally wrongful act in accordance with the provisions of Part Two involves legal consequences as set out in this Part.

Article 29. Continued duty of performance

The legal consequences of an internationally wrongful act under this Part do not affect the continued duty of the responsible international organization to perform the obligation breached.

Article 30. Cessation and non-repetition

The international organization responsible for the internationally wrongful act is under an obligation:

(*a*) to cease that act, if it is continuing;

(*b*) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.

Article 31. Reparation

1. The responsible international organization is under an obligation to make full reparation for the injury caused by the internationally wrongful act.

2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of an international organization.

Article 32. Relevance of the rules of the organization

1. The responsible international organization may not rely on its rules as justification for failure to comply with its obligations under this Part.

2. Paragraph 1 is without prejudice to the applicability of the rules of an international organization to the relations between the organization and its member States and organizations.

Article 33. Scope of international obligations set out in this Part

1. The obligations of the responsible international organization set out in this Part may be owed to one or more States, to one or more other organizations, or to the international community as a whole, depending in particular on the character and content of the international obligation and on the circumstances of the breach.

2. This Part is without prejudice to any right, arising from the international responsibility of an international organization, which may accrue directly to any person or entity other than a State or an international organization.

CHAPTER II

REPARATION FOR INJURY

Article 34. Forms of reparation

Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this chapter.

Article 35. Restitution

An international organization responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

(*a*) is not materially impossible;

(*b*) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.

Article 36. Compensation

1. The international organization responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.

2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.

Article 37. Satisfaction

1. The international organization responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation.

2. Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.

3. Satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible international organization.

Article 38. Interest

1. Interest on any principal sum due under this chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.

2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.

Article 39. Contribution to the injury

In the determination of reparation, account shall be taken of the contribution to the injury by wilful or negligent action or omission of the injured State or international organization or of any person or entity in relation to whom reparation is sought.

Article 40. Ensuring the fulfilment of the obligation to make reparation

1. The responsible international organization shall take all appropriate measures in accordance with its rules to ensure that its members provide it with the means for effectively fulfilling its obligations under this chapter.

2. The members of a responsible international organization shall take all the appropriate measures that may be required by the rules of the organization in order to enable the organization to fulfil its obligations under this chapter.

CHAPTER III

SERIOUS BREACHES OF OBLIGATIONS UNDER PEREMPTORY NORMS OF GENERAL INTERNATIONAL LAW

Article 41. Application of this chapter

1. This chapter applies to the international responsibility which is entailed by a serious breach by an international organization of an obligation arising under a peremptory norm of general international law.

2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible international organization to fulfil the obligation.

Article 42. Particular consequences of a serious breach of an obligation under this chapter

1. States and international organizations shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 41.

2. No State or international organization shall recognize as lawful a situation created by a serious breach within the meaning of article 41, nor render aid or assistance in maintaining that situation.

3. This article is without prejudice to the other consequences referred to in this Part and to such further consequences that a breach to which this chapter applies may entail under international law.

PART FOUR

THE IMPLEMENTATION OF THE INTERNATIONAL RESPONSIBILITY OF AN INTERNATIONAL ORGANIZATION

CHAPTER I

INVOCATION OF THE RESPONSIBILITY OF AN INTERNATIONAL ORGANIZATION

Article 43. Invocation of responsibility by an injured State or international organization

A State or an international organization is entitled as an injured State or an injured international organization to invoke the responsibility of another international organization if the obligation breached is owed to:

(*a*) that State or the former international organization individually;

(*b*) a group of States or international organizations including that State or the former international organization, or the international community as a whole, and the breach of the obligation:

(i) specially affects that State or that international organization; or

(ii) is of such a character as radically to change the position of all the other States and international organizations to which the obligation is owed with respect to the further performance of the obligation.

Article 44. Notice of claim by an injured State or international organization

1. An injured State or international organization which invokes the responsibility of another international organization shall give notice of its claim to that organization.

2. The injured State or international organization may specify in particular:

(*a*) the conduct that the responsible international organization should take in order to cease the wrongful act, if it is continuing;

(*b*) what form reparation should take in accordance with the provisions of Part Three.

Article 45. Admissibility of claims

1. An injured State may not invoke the responsibility of an international organization if the claim is not brought in accordance with any applicable rule relating to the nationality of claims.

2. When the rule of exhaustion of local remedies applies to a claim, an injured State or international organization may not invoke the responsibility of another international organization if any available and effective remedy has not been exhausted.

Article 46. Loss of the right to invoke responsibility

The responsibility of an international organization may not be invoked if:

(*a*) the injured State or international organization has validly waived the claim;

(*b*) the injured State or international organization is to be considered as having, by reason of its conduct, validly acquiesced in the lapse of the claim.

Article 47. Plurality of injured States or international organizations

Where several States or international organizations are injured by the same internationally wrongful act of an international organization, each injured State or international organization may separately invoke the responsibility of the international organization for the internationally wrongful act.

Article 48. Responsibility of an international organization and one or more States or international organizations

1. Where an international organization and one or more States or other international organizations are responsible for the same internationally wrongful act, the responsibility of each State or organization may be invoked in relation to that act.

2. Subsidiary responsibility may be invoked insofar as the invocation of the primary responsibility has not led to reparation.

3. Paragraphs 1 and 2:

(*a*) do not permit any injured State or international organization to recover, by way of compensation, more than the damage it has suffered;

(*b*) are without prejudice to any right of recourse that the State or international organization providing reparation may have against the other responsible States or international organizations.

Article 49. Invocation of responsibility by a State or an international organization other than an injured State or international organization

1. A State or an international organization other than an injured State or international organization is entitled to invoke the responsibility of another international organization in accordance with paragraph 4 if the obligation breached is owed to a group of States or international organizations, including the State or organization that invokes responsibility, and is established for the protection of a collective interest of the group.

2. A State other than an injured State is entitled to invoke the responsibility of an international organization in accordance with paragraph 4 if the obligation breached is owed to the international community as a whole.

3. An international organization other than an injured international organization is entitled to invoke the responsibility of another international organization in accordance with paragraph 4 if the obligation breached is owed to the international community as a whole and safeguarding the interest of the international community as a whole underlying the obligation breached is within the functions of the international organization invoking responsibility.

4. A State or an international organization entitled to invoke responsibility under paragraphs 1 to 3 may claim from the responsible international organization:

(*a*) cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with draft article 30; and

(*b*) performance of the obligation of reparation in accordance with Part Three, in the interest of the injured State or international organization or of the beneficiaries of the obligation breached.

5. The requirements for the invocation of responsibility by an injured State or international organization under draft articles 44, 45, paragraph 2, and 46 apply to an invocation of responsibility by a State or international organization entitled to do so under paragraphs 1 to 4.

Article 50. Scope of this chapter

This chapter is without prejudice to the entitlement that a person or entity other than a State or an international organization may have to invoke the international responsibility of an international organization.

CHAPTER II

COUNTERMEASURES

Article 51. Object and limits of countermeasures

1. An injured State or an injured international organization may only take countermeasures against an international organization which is responsible for an internationally wrongful act in order to induce that organization to comply with its obligations under Part Three.

2. Countermeasures are limited to the non-performance for the time being of international obligations of the State or international organization taking the measures towards the responsible international organization.

3. Countermeasures shall, as far as possible, be taken in such a way as to permit the resumption of performance of the obligations in question.

4. Countermeasures shall, as far as possible, be taken in such a way as to limit their effects on the exercise by the responsible international organization of its functions.

Article 52. Conditions for taking countermeasures by members of an international organization

1. Subject to paragraph 2, an injured State or international organization which is a member of a responsible international organization may not take countermeasures against that organization unless:

(*a*) the conditions referred to in article 51 are met;

(*b*) the countermeasures are not inconsistent with the rules of the organization; and

(*c*) no appropriate means are available for otherwise inducing compliance with the obligations of the responsible international organization concerning cessation of the breach and reparation.

2. Countermeasures may not be taken by an injured State or international organization which is a member of a responsible international organization against that organization in response to a breach of an international obligation under the rules of the organization unless such countermeasures are provided for by those rules.

Article 53. Obligations not affected by countermeasures

1. Countermeasures shall not affect:

(*a*) the obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations;

(*b*) obligations for the protection of human rights;

(*c*) obligations of a humanitarian character prohibiting reprisals;

(*d*) other obligations under peremptory norms of general international law.

2. An injured State or international organization taking countermeasures is not relieved from fulfilling its obligations:

(*a*) under any dispute settlement procedure applicable between it and the responsible international organization;

(*b*) to respect any inviolability of organs or agents of the responsible international organization and of the premises, archives and documents of that organization.

Article 54. Proportionality of countermeasures

Countermeasures must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question.

Article 55. Conditions relating to resort to countermeasures

1. Before taking countermeasures, an injured State or international organization shall:

(*a*) call upon the responsible international organization, in accordance with draft article 44, to fulfil its obligations under Part Three;

(*b*) notify the responsible international organization of any decision to take countermeasures and offer to negotiate with that organization.

2. Notwithstanding paragraph 1 (*b*), the injured State or international organization may take such urgent countermeasures as are necessary to preserve its rights.

3. Countermeasures may not be taken, and if already taken must be suspended without undue delay if:

(*a*) the internationally wrongful act has ceased; and

(*b*) the dispute is pending before a court or tribunal which has the authority to make decisions binding on the parties.

4. Paragraph 3 does not apply if the responsible international organization fails to implement the dispute settlement procedures in good faith.

Article 56. Termination of countermeasures

Countermeasures shall be terminated as soon as the responsible international organization has complied with its obligations under Part Three in relation to the internationally wrongful act.

Article 57. Measures taken by States or international organizations other than an injured State or organization

This chapter does not prejudice the right of any State or international organization, entitled under article 49, paragraphs 1 to 3, to invoke the responsibility of another international organization, to take lawful measures against that organization to ensure cessation of the breach and reparation in the interest of the injured State or organization or of the beneficiaries of the obligation breached.

PART FIVE

RESPONSIBILITY OF A STATE IN CONNECTION WITH THE CONDUCT OF AN INTERNATIONAL ORGANIZATION

Article 58. Aid or assistance by a State in the commission of an internationally wrongful act by an international organization

1. A State which aids or assists an international organization in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

(*a*) the State does so with knowledge of the circumstances of the internationally wrongful act; and

(*b*) the act would be internationally wrongful if committed by that State.

2. An act by a State member of an international organization done in accordance with the rules of the organization does not as such engage the international responsibility of that State under the terms of this article.

Article 59. Direction and control exercised by a State over the commission of an internationally wrongful act by an international organization

1. A State which directs and controls an international organization in the commission of an internationally wrongful act by the latter is internationally responsible for that act if:

(*a*) the State does so with knowledge of the circumstances of the internationally wrongful act; and

(*b*) the act would be internationally wrongful if committed by that State.

2. An act by a State member of an international organization done in accordance with the rules of the organization does not as such engage the international responsibility of that State under the terms of this draft article.

Article 60. Coercion of an international organization by a State

A State which coerces an international organization to commit an act is internationally responsible for that act if:

(*a*) the act would, but for the coercion, be an internationally wrongful act of the coerced international organization; and

(*b*) the coercing State does so with knowledge of the circumstances of the act.

Article 61. Circumvention of international obligations of a State member of an international organization

1. A State member of an international organization incurs international responsibility if, by taking advantage of the fact that the organization has competence in relation to the subject matter of one of the State's international obligations, it circumvents that obligation by causing the organization to commit an act that, if committed by the State, would have constituted a breach of the obligation.

2. Paragraph 1 applies whether or not the act in question is internationally wrongful for the international organization.

Article 62. Responsibility of a State member of an international organization for an internationally wrongful act of that organization

1. A State member of an international organization is responsible for an internationally wrongful act of that organization if:

(*a*) it has accepted responsibility for that act towards the injured party; or

(*b*) it has led the injured party to rely on its responsibility.

2. Any international responsibility of a State under paragraph 1 is presumed to be subsidiary.

Article 63. Effect of this Part

This Part is without prejudice to the international responsibility of the international organization which commits the act in question, or of any State or other international organization.

PART SIX

GENERAL PROVISIONS

***Article 64.* Lex specialis**

These draft articles do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the international responsibility of an international organization, or of a State in connection with the conduct of an international organization, are governed by special rules of international law. Such special rules of international law may be contained in the rules of the organization applicable to the relations between an international organization and its members.

Article 65. Questions of international responsibility not regulated by these draft articles

The applicable rules of international law continue to govern questions concerning the responsibility of an international organization or a State for an internationally wrongful act to the extent that they are not regulated by these draft articles.

Article 66. Individual responsibility

These draft articles are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of an international organization or a State.

Article 67. Charter of the United Nations

These draft articles are without prejudice to the Charter of the United Nations.

2. TEXT OF THE DRAFT ARTICLES WITH COMMENTARIES THERETO

88. The text of the draft articles with commentaries thereto on the responsibility of international organizations as adopted by the Commission, on second reading, at its sixty-third session is reproduced below.

RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS

General commentary

(1) In 2001, the International Law Commission adopted a set of articles on responsibility of States for internationally wrongful acts.[48] As stated in those articles, they "are without prejudice to any question of the responsibility under international law of an international organization, or of any State for the conduct of an international organization" (art. 57).[49] Given the number of existing international organizations and their ever-increasing functions, these issues appeared to be of particular importance. Thus the Commission decided in 2002 to pursue its work for the codification and the progressive development of the law of international responsibility by taking up the two questions that had been left without prejudice in article 57 on State responsibility. The present draft articles represent the result of this further study. In conducting the study, the Commission was assisted by the comments and suggestions received from States and international organizations.

(2) The scope of application of the present draft articles reflects what was left open in article 57 of the draft articles on State responsibility. Most of the present draft articles consider the first issue that was mentioned in that provision: the responsibility of an international organization for an act which is internationally wrongful. Only a few draft articles, mainly those contained in Part Five, consider the second issue: the responsibility of a State for the conduct of an international organization. The second issue is closely connected with the first one because the conduct in question of an international organization will generally be internationally wrongful and entail the international responsibility of the international organization concerned. However, under certain circumstances that are considered in articles 60 and 61 and the related commentaries, the conduct of an international organization may not be wrongful and no international responsibility would arise for that organization.

(3) In addressing the issue of responsibility of international organizations, the present draft articles follow the same approach adopted with regard to State responsibility. The draft articles thus rely on the basic distinction between primary rules of international law, which establish obligations for international organizations, and secondary rules, which consider the existence of a breach of an international obligation and its consequences for the responsible international organization. Like the articles on State responsibility, the present draft articles express secondary rules. Nothing in the draft articles should be read as implying the existence or otherwise of any particular primary rule binding on international organizations.

(4) While the present draft articles are in many respects similar to the articles on State responsibility, they represent an autonomous text. Each issue has been considered from the specific perspective of the responsibility of international organizations. Some provisions address questions that are peculiar to international organizations. When, in the study of the responsibility of international organizations, the conclusion is reached that an identical or similar solution to the one expressed in the articles on State responsibility should apply with respect to international organizations, this is based on appropriate reasons and not on a general presumption that the same principles apply.

(5) One of the main difficulties in elaborating rules concerning the responsibility of international organizations is the limited availability of pertinent practice. The main reason for this is that practice concerning responsibility of international organizations has developed only over a relatively recent period. One further reason is the limited use of procedures for third-party settlement of disputes to which international organizations are parties. Moreover, relevant practice resulting from exchanges of correspondence may not be always easy to locate, nor are international organizations or States often willing to disclose it. The fact that several of the present draft articles are based on limited practice moves the border between

[48] *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, para. 76.

[49] *Ibid*., p. 141.

event, this type of agreement is not conclusive because it governs only the relations between the contributing State or organization and the receiving organization and could thus not have the effect of depriving a third party of any right that this party may have towards the State or organization that is responsible under the general rules.

(4) The criterion for attribution of conduct either to the contributing State or organization or to the receiving organization is based, according to article 7, on the factual control that is exercised over the specific conduct taken by the organ or agent placed at the receiving organization's disposal. As was noted in a comment by one State, account needs to be taken of the "full factual circumstances and particular context".[110] Article 6 of the articles on responsibility of States for internationally wrongful acts[111] takes a similar approach, although it is differently worded. According to the latter article, what is relevant is that "the organ is acting in the exercise of elements of the governmental authority of the State at whose disposal it is placed". However, the commentary to article 6 on the responsibility of States for internationally wrongful acts explains that, for conduct to be attributed to the receiving State, it must be "under its exclusive direction and control, rather than on instructions from the sending State".[112] In any event, the wording of article 6 cannot be replicated here, because the reference to "the exercise of elements of governmental authority" is unsuitable to international organizations.

(5) With regard to States, the existence of control has been mainly discussed in relation to the question whether conduct of persons or of groups of persons, especially irregular armed forces, is attributable to a State.[113] In the context of the placing of an organ or agent at the disposal of an international organization, control plays a different role. It does not concern the issue whether a certain conduct is attributable at all to a State or an international organization, but rather to which entity—the contributing State or organization or the receiving organization—conduct has to be attributed.

(6) The United Nations assumes that in principle it has exclusive control of the deployment of national contingents in a peacekeeping force. This premise led the United Nations Legal Counsel to state that

> [a]s a subsidiary organ of the United Nations, an act of a peacekeeping force is, in principle, imputable to the Organization, and if committed in violation of an international obligation entails the international responsibility of the Organization and its liability in compensation.[114]

This statement sums up United Nations practice relating to the United Nations Operation in the Congo,[115] the United Nations Peacekeeping Force in Cyprus[116] and later peacekeeping forces.[117] In a recent comment, the United Nations Secretariat observed that "[f]or a number of reasons, notably political", the practice of the United Nations had been that of "maintaining the principle of United Nations responsibility *vis-à-vis* third parties" in connection with peacekeeping operations.[118]

(7) Practice relating to peacekeeping forces is particularly significant in the present context because of the control that the contributing State retains over disciplinary and criminal matters.[119] This may have consequences with regard to attribution of conduct. For instance, the United Nations Office of Legal Affairs took the following line with regard to compliance with obligations under the 1973 Convention on international trade in endangered species of wild fauna and flora:

> Since the Convention places the responsibility for enforcing its provisions on the States parties and since the troop-contributing States retain jurisdiction over the criminal acts of their military personnel, the responsibility for enforcing the provisions of the Convention rests with those troop-contributing States which are parties to the Convention.[120]

Attribution of conduct to the contributing State is clearly linked with the retention of some powers by that State over its national contingent and thus on the control that the State possesses in the relevant respect.

(8) As has been held by several scholars,[121] when an organ or agent is placed at the disposal of an international

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[110] United Kingdom (*Official Records of the General Assembly, Sixty-fourth Session, Sixth Committee*, 16th meeting (A/C.6/64/SR.16), para. 23).

[111] *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, pp. 43−45.

[112] *Ibid.*, p. 44, paragraph (2) of the commentary to article 6.

[113] See article 8 of the draft articles on responsibility of States for internationally wrongful acts and commentary thereto (*ibid*., pp. 47–49).

[114] Memorandum of 3 February 2004 by the United Nations Legal Counsel to the Director of the Codification Division, *Yearbook ... 2004*, vol. II (Part One), document A/CN.4/545, p. 28.

[115] See the agreements providing for compensation that were concluded by the United Nations with Belgium (United Nations, *Treaty Series*, vol. 535, No. 7779, p. 191), Greece (*ibid* , vol. 565, No. 8230, p. 3), Italy (*ibid*., vol. 588, No. 8525, p. 197), Luxembourg (*ibid*., vol. 585, No. 8487, p. 147) and Switzerland (*ibid*., vol. 564, No. 621, p. 193).

[116] United Nations, *Juridical Yearbook 1980* (Sales No. E.83.V.1), pp. 184–185.

[117] See Report of the Secretary-General on financing of United Nations peacekeeping operations (A/51/389), paras. 7−8.

[118] A/CN.4/637 and Add.1 (under the section entitled "Draft article 6 … United Nations"), para. 6.

[119] See above, paragraph (1) of the commentary to the present draft article and footnote 107.

[120] United Nations, *Juridical Yearbook 1994* (Sales No. E.00.V.8), p. 450.

[121] See J.-P. Ritter, "La protection diplomatique à l'égard d'une organisation internationale", AFDI, vol. 8 (1962), pp. 427 *et seq*., at p. 442; R. Simmonds, *Legal Problems Arising from the United Nations Military Operations in the Congo*, The Hague, Martinus Nijhoff, 1968, p. 229; B. Amrallah, "The international responsibility of the United Nations for activities carried out by U N. peace-keeping forces", *Revue égyptienne de droit international*, vol. 32 (1976), pp. 57 *et seq*., at pp. 62–63 and 73–79; E. Butkiewicz, "The premises of international responsibility of inter-governmental organizations", *Polish Yearbook of International Law*, vol. 11 (1981–1982), pp. 117 *et seq*., at pp. 123–125 and 134–135; M. Pérez González, "Les organisations internationales et le droit de la responsabilité", RGDIP, vol. 92 (1988), pp. 63 *et seq*., at p. 83; M. Hirsch, *The Responsibility of International Organizations toward Third Parties*, Dordrecht, Martinus Nijhoff, 1995, pp. 64–67; C. F. Amerasinghe, *Principles of the Institutional Law of International Organizations*, Cambridge University Press, 1996, pp. 241–243; P. Klein, *La responsabilité des organisations internationales dans les ordres juridiques internes et en droit des gens*, Brussels, Bruylant/ Editions de l'Université de Bruxelles, 1998, pp. 379–380; I. Scobbie, "International organizations and international relations", in R.-J. Dupuy (ed.), *A Handbook of International Organizations*, 2nd ed., Dordrecht, Martinus Nijhoff, 1998, p. 891; C. Pitschas, *Die völkerrechtliche Verantwortlichkeit der Europäischen Gemeinschaft und ihrer Mitgliedstaaten*, Berlin, Duncker and Humblot, 2001, p. 51; and J.-M. Sorel, "La responsabilité des Nations Unies dans les opérations de

(*Continued on next page.*)

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ILC, Guide to Practice on Reservations to Treaties, *Yearbook of the International Law Commission*, 2011, vol. II, Part Three, UN doc. A/CN.4/SER.A/2011/Add.1 (Part 3) [extract]

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YEARBOOK OF THE INTERNATIONAL LAW COMMISSION

2011

Volume II
Part Three

Report of the Commission to the General Assembly on the work of its sixty-third session (Addendum)

UNITED NATIONS

Annex 72

Chapter IV

RESERVATIONS TO TREATIES (*concluded*)*

F. Text of the Guide to Practice on Reservations to Treaties, adopted by the Commission at its sixty-third session

1. Text of the guidelines constituting the Guide to Practice, followed by an annex on the reservations dialogue

1. The text of the guidelines constituting the Guide to Practice on Reservations to Treaties adopted by the Commission at its sixty-third session, followed by an annex on the reservations dialogue, is reproduced below.

GUIDE TO PRACTICE ON RESERVATIONS TO TREATIES

1. *Definitions*

1.1 *Definition of reservations*

1. "Reservation" means a unilateral statement, however phrased or named, made by a State or an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, or by a State when making a notification of succession to a treaty, whereby the State or organization purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State or to that international organization.

2. Paragraph 1 is to be interpreted as including reservations which purport to exclude or to modify the legal effect of certain provisions of a treaty, or of the treaty as a whole with respect to certain specific aspects, in their application to the State or to the international organization which formulates the reservation.

1.1.1 *Statements purporting to limit the obligations of their author*

A unilateral statement formulated by a State or an international organization at the time when that State or that organization expresses its consent to be bound by a treaty, by which its author purports to limit the obligations imposed on it by the treaty, constitutes a reservation.

1.1.2 *Statements purporting to discharge an obligation by equivalent means*

A unilateral statement formulated by a State or an international organization at the time when that State or that organization expresses its consent to be bound by a treaty, by which that State or that organization purports to discharge an obligation pursuant to the treaty in a manner different from, but considered by the author of the statement to be equivalent to that imposed by the treaty, constitutes a reservation.

1.1.3 *Reservations relating to the territorial application of the treaty*

A unilateral statement by which a State purports to exclude the application of some provisions of a treaty, or of the treaty as a whole with respect to certain specific aspects, to a territory to which they would be applicable in the absence of such a statement constitutes a reservation.

1.1.4 *Reservations formulated when extending the territorial application of a treaty*

A unilateral statement by which a State, when extending the application of a treaty to a territory, purports to exclude or to modify the legal effect of certain provisions of the treaty in relation to that territory constitutes a reservation.

1.1.5 *Reservations formulated jointly*

The joint formulation of a reservation by several States or international organizations does not affect the unilateral character of that reservation.

1.1.6 *Reservations formulated by virtue of clauses expressly authorizing the exclusion or the modification of certain provisions of a treaty*

A unilateral statement made by a State or an international organization when that State or organization expresses its consent to be bound by a treaty, in accordance with a clause expressly authorizing the parties or some of them to exclude or to modify the legal effect of certain provisions of the treaty with regard to the party that has made the statement, constitutes a reservation expressly authorized by the treaty.

1.2 *Definition of interpretative declarations*

"Interpretative declaration" means a unilateral statement, however phrased or named, made by a State or an international organization, whereby that State or that organization purports to specify or clarify the meaning or scope of a treaty or of certain of its provisions.

1.2.1 *Interpretative declarations formulated jointly*

The joint formulation of an interpretative declaration by several States or international organizations does not affect the unilateral character of that interpretative declaration.

1.3 *Distinction between reservations and interpretative declarations*

The character of a unilateral statement as a reservation or as an interpretative declaration is determined by the legal effect that its author purports to produce.

1.3.1 *Method of determining the distinction between reservations and interpretative declarations*

To determine whether a unilateral statement formulated by a State or an international organization in respect of a treaty is a reservation or an interpretative declaration, the statement should be interpreted in good faith in accordance with the ordinary meaning to be given to its terms, with a view to identifying therefrom the intention of its author, in light of the treaty to which it refers.

1.3.2 *Phrasing and name*

The phrasing or name of a unilateral statement provides an indication of the purported legal effect.

1.3.3 *Formulation of a unilateral statement when a reservation is prohibited*

When a treaty prohibits reservations to all or certain of its provisions, a unilateral statement formulated in respect of those provisions

* See sections A–E and F 1 of this chapter in *Yearbook ... 2011*, vol II (Part Two), paras 51–75

formulates both reservations and interpretative declarations in respect of a single treaty at the same time.

(9) This observation is consistent with the more general position taken by writers that "there is a potential for inequity in this aspect ['however phrased or named'] of the definition". "Under the Vienna Convention, the disadvantages of determining that a statement is a reservation are … imposed over the other parties to the treaty … It would be unfortunate in such circumstances if the words 'however phrased or named' were given an overriding effect. In exceptional circumstances it might be possible for a party to rely upon an estoppel against a State which attempts to argue that its statement is a reservation … While this is a matter of interpretation rather than the application of equitable principles, it is in keeping with notions of fairness and good faith which underlie the treaty relations of States."[224]

(10) Without reopening the debate on the principle posed by the 1969 Vienna Convention with regard to the definition of reservations, a principle which extends to the definition of interpretative declarations,[225] it would seem legitimate, then, to spell out the extent to which it is possible to remain indifferent to the nominalism implied by the expression "however phrased or named". This is the purpose of guideline 1.3.2, which acknowledges that the name a State gives to its declaration is nevertheless an indication of what it is, although it does not constitute an irrebuttable presumption.

(11) This indication, while still rebuttable, is reinforced when a State simultaneously formulates reservations and interpretative declarations and designates them respectively as such.

1.3.3 *Formulation of a unilateral statement when a reservation is prohibited*

When a treaty prohibits reservations to all or certain of its provisions, a unilateral statement formulated in respect of those provisions by a State or an international organization shall be presumed not to constitute a reservation. Such a statement nevertheless constitutes a reservation if it purports to exclude or modify the legal effect of certain provisions of the treaty, or of the treaty as a whole with respect to certain specific aspects, in their application to its author.

Commentary

(1) Guideline 1.3.3 has been worded in the same spirit as the preceding guideline and its purpose is to make it easier to say whether a unilateral statement formulated in respect of a treaty should be classified as a reservation or as an interpretative declaration when the treaty prohibits reservations in general,[226] or to certain of its provisions.[227]

(2) It seems to the Commission that, in such situations, statements made in respect of provisions to which any reservation is prohibited must be deemed to constitute interpretative declarations. "This would comply with the presumption that a State would intend to perform an act permitted, rather than one prohibited, by a treaty and protect the State from the possibility that the impermissible reservation would have the effect of invalidating the entire act of acceptance of the treaty to which the declaration was attached."[228] In a more general context, this presumption of permissibility is consonant with the "well-established general principle of law that bad faith is not presumed".[229]

(3) It goes without saying, however, that the presumption referred to in guideline 1.3.3 is not irrebuttable and that if the statement actually purports to exclude or modify the legal effect of the provisions of the treaty and not simply to interpret them, then it must be considered to be a reservation and the consequence of article 19, subparagraphs (*a*) and (*b*), of the 1969 and 1986 Vienna Conventions is that such a reservation is impermissible and must be treated as such. This is consistent with the principle of the irrelevance, in principle, of the phrasing or name of unilateral statements formulated in respect of a treaty, as embodied in the definition of reservations and interpretative declarations.[230]

(4) It is apparent from both the title of the guideline and its wording that the guideline's purpose is not to determine whether unilateral declarations formulated in the circumstances in question constitute interpretative declarations or unilateral statements other than reservations or interpretative declarations as defined in section 1.5 of the present chapter. This guideline draws attention to the principle that there can be no presumption that a declaration made in respect of treaty provisions to which a reservation is prohibited is a reservation.

(5) If this is not the case, it is for the interpreter of the declaration in question, which may be either an interpretative declaration or a declaration under section 1.5, to classify it positively on the basis of guidelines 1.2 and 1.5.1–1.5.3.

1.4 *Conditional interpretative declarations*

1. A conditional interpretative declaration is a unilateral statement formulated by a State or an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, or by a State when making a notification of succession to a treaty, whereby the State or international organization subjects its consent to be bound by the treaty to a specific interpretation of the treaty or of certain provisions thereof.

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[224] Greig, "Reservations: equity as a balancing factor?" (footnote 28 above), pp. 27–28; see also p. 34.

[225] See guideline 1.2.

[226] As, for example, in the case of article 309 of the United Nations Convention on the Law of the Sea

[227] As, for example, in the case of article 12 of the Convention on the Continental Shelf, which deals with reservations to articles 1–3 See the arbitral decision of 30 June 1977 (footnote 24 above) handed down in the *Case concerning the delimitation of the Continental Shelf between the United Kingdom …* (see footnote 24 above), pp 32–33, paras. 38–39; see also the individual opinion of H. W. Briggs (*ibid.*, p 123)

[228] Greig, "Reservations: equity as a balancing factor?" (see footnote 28 above), 1995, p 25

[229] Arbitral decision of 16 November 1957, *Lac Lanoux* case, *Reports of International Arbitral Awards*, vol XII (United Nations publication, Sales No 63 V 3), p 305

[230] See guidelines 1.1 and 1.2.

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2. Conditional interpretative declarations are subject to the rules applicable to reservations.

Commentary

(1) In accordance with the definition given in guideline 1.2, interpretative declarations can be seen as "offers" of interpretation, governed by the fundamental principle of good faith, but lacking any inherent authentic or binding character. However, their authors frequently endeavour to broaden their scope, so that they come closer to being a reservation without actually becoming one. This is what happens when a State or international organization not merely proposes an interpretation but makes its interpretation a condition of its consent to be bound by the treaty.

(2) The Commission has recognized the existence of such a practice, which was not systematized in the legal doctrine until relatively recently,[231] while continuing to explore the exact legal nature of such unilateral statements.

(3) It is not uncommon for a State, when formulating a declaration, to state expressly that its interpretation constitutes the *sine qua non* to which its consent to be bound is subordinate. For example, France attached to its signature[232] of Additional Protocol II of the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean ("Treaty of Tlatelolco") a four-point interpretative declaration, stipulating:

> In the event that the interpretative declaration thus made by the French Government should be contested wholly or in part by one or more Contracting Parties to the Treaty or to Protocol II, these instruments shall be null and void in relations between the French Republic and the contesting State or States.

The conditional nature of the French declaration here is indisputable. However, through the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean, the Latin American States requested the French Government to withdraw the part of the French interpretative declaration that referred to the possibility of using nuclear weapons in the event of armed attack. Those States were of the opinion that such an interpretation did not comply with the requirements of necessity and proportionality inherent in the notion of self-defence under international law. France has not yet withdrawn this part of its interpretative declaration, but has repeatedly expressed its intention to remain a State party to the Additional Protocols to the Treaty of Tlatelolco.

(4) Although it is drafted less categorically, the same can surely be said of the "understanding" recorded by the Islamic Republic of Iran in connection with the United Nations Convention on the Law of the Sea:

> The main objective [of the Government of the Islamic Republic of Iran] for submitting these declarations is the avoidance of eventual future interpretation of the following articles in a manner incompatible with the original intention and previous positions or in disharmony with national laws and regulations.[233]

(5) In other cases, the conditional nature of the declaration can be deduced from its drafting. For example, its categorical wording leaves little doubt that the interpretative declaration made by Israel upon signing the International Convention against the taking of hostages of 17 December 1979 should be considered a conditional interpretative declaration:

> It is the understanding of Israel that the Convention implements the principle that hostage taking is prohibited in all circumstances and that any person committing such an act shall be either prosecuted or extradited pursuant to article 8 of this Convention or the relevant provisions of the Geneva Conventions of 1949 or their Additional Protocols, without any exception whatsoever [234]

(6) The same holds true for the interpretative declaration made by Turkey in respect of the 1976 Convention on the prohibition of military or any other hostile use of environmental modification techniques:

> In the opinion of the Turkish Government the terms "widespread", "long-lasting" and "severe effects" contained in the Convention need to be clearly defined. So long as this clarification is not made the Government of Turkey will be compelled to interpret itself the terms in question and consequently it reserves the right to do so as and when required [235]

(7) Conversely, a declaration such as the one made by the United States of America when signing the 1988 Protocol to the 1979 Convention on long-range transboundary air pollution concerning the control of emissions of nitrogen oxides or their transboundary fluxes is clearly a simple interpretative declaration:

> The Government of the United States of America understands that nations will have the flexibility to meet the overall requirements of the protocol through the most effective means.[236]

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[231] The distinction between these two types of interpretative declaration was clearly and authoritatively drawn by McRae in an important article published in 1978. Exploring the effect of interpretative declarations, he noted that "two situations have to be considered. The first is where a State attaches to its instrument of acceptance a statement that simply purports to offer an interpretation of the treaty or part of it This may be called a 'simple interpretative declaration' [They are referred to as 'mere declaratory statements' by [I.] Detter, *Essays on the Law of Treaties*, 1967, pp 51–52] The second situation is where a State makes its ratification of or accession to a treaty subject to, or on condition of, a particular interpretation of the whole or part of the treaty This may be called a 'qualified interpretative declaration'. In the first situation the State has simply indicated its view of the interpretation of the treaty, which may or may not be the one that will be accepted in any arbitral or judicial proceedings. In offering this interpretation the State has not ruled out subsequent interpretative proceedings nor has it ruled out the possibility that its interpretation will be rejected … If, on the other hand, the declaring State wishes to assert its interpretation regardless of what a subsequent tribunal might conclude, that is, the State when making the declaration has ruled out the possibility of a subsequent inconsistent interpretation of the treaty, a different result should follow This is a 'qualified interpretative declaration'. The State is making its acceptance of the treaty subject to or conditional upon acquiescence in its interpretation" (McRae, "The legal effect of interpretative declarations" (see footnote 129 above), pp 160–161) The expression "qualified interpretative declaration" has little meaning in English. This distinction is reflected in the works of a number of authors; for example, see Cameron and Horn, "Reservations to the European Convention …" (footnote 205 above), p 77, or Sapienza, *Dichiarazioni interpretative unilaterali* ... (see footnote 129 above), pp 205–206, or Heymann, *Einseitige Interpretationserklärungen* ... (see footnote 147 above), pp 70–87

[232] The declaration was confirmed upon ratification on 22 March 1974; see United Nations, *Treaty Series*, vol 936, p 419

[233] *Multilateral Treaties* ... (footnote 37 above), chap XXI 6

[234] *Ibid.*, chap XVIII 5

[235] *Ibid.*, chap XXVI 1

[236] *Ibid.*, chap XXVII 1 c

(8) It is in fact only rarely that the conditional nature of an interpretative declaration is clearly apparent from the wording used.[237] In such situations the distinction between "simple" and "conditional" interpretative declarations poses problems similar to those posed by the distinction between reservations and interpretative declarations, and these problems must be solved in accordance with the same principles.[238]

(9) Moreover, it is not uncommon for the true nature of interpretative declarations to become clear when they are contested by other contracting States or contracting organizations. This is demonstrated by some famous examples, such as the declaration that India attached to its instrument of ratification of the Convention on the Inter-Governmental Maritime Consultative Organization (IMCO), subsequently the International Maritime Organization (IMO)[239] or the declaration of Cambodia with regard to the same Convention.[240] These precedents confirm that there is a discrepancy between some declarations, in which the State or international organization formulating them does no more than explain its interpretation of the treaty, and others in which the authors seek to impose their interpretation on the other contracting States or contracting organizations.

(10) This discrepancy is of great practical significance. Unlike reservations, simple interpretative declarations place no conditions on the expression by a State or international organization of its consent to be bound; they simply attempt to anticipate any dispute that may arise concerning the interpretation of the treaty. The declarant "sets a date", in a sense; it gives notice that, should a dispute arise, its interpretation will be such, but it does not make that point a condition for its participation in the treaty. Conversely, conditional declarations are closer to reservations in that they seek to produce a legal effect on the application of the provisions of the treaty, which the State or international organization accepts only on condition that the provisions are interpreted in a specific way.

(11) Case law reflects the ambivalent nature of conditional interpretative declarations:

– in the *Belilos* case, the European Court of Human Rights considered the validity of the interpretative declaration of Switzerland "from the standpoint of" the rules applicable to reservations, without assimilating one to the other;[241]

[237] Most often, the declaring State or international organization simply says that it "considers that …" (for examples (of which there are a great many), see the declarations made by Brazil when signing the United Nations Convention on the Law of the Sea (*ibid.*, chap XXI 6), the third declaration made by the European Community when signing the 1991 Convention on environmental impact assessment in a transboundary context (*ibid.*, chap XXVII 4), or those made by Bulgaria to the Vienna Convention on Consular Relations of 1963 (*ibid.*, chap III 6) or to the 1974 Convention on a Code of Conduct for Liner Conferences (*ibid.*, chap XII 6)), "considers that …" (see the declaration made by Sweden concerning the Convention on the International Maritime Organization (*ibid.*, chap XII 1)), or "declares that …" (see the second and third declarations made by France concerning the 1966 International Covenant on Economic, Social and Cultural Rights (*ibid.*, chap. IV.3)) or that made by the United Kingdom when signing the 1989 Basel Convention on the control of transboundary movements of hazardous wastes and their disposal (*ibid.*, chap XXVII 3), or that it "interprets" a particular provision in a particular way (see the declarations made by Algeria or Belgium in respect of the International Covenant on Economic, Social and Cultural Rights (*ibid.*, chap IV 3), the declaration made by Ireland in respect of article 31 of the 1954 Convention relating to the Status of Stateless Persons (*ibid.*, chap V 3) or the first declaration made by France when signing the 1992 Convention on Biological Diversity (*ibid.*, chap. XXVII.8)), or that, "according to its interpretation", a particular provision has a certain meaning (see the declarations by the Netherlands concerning the 1980 Convention on prohibitions or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects of 10 October 1980 (*ibid.*, chap XXVI 2) or those made by Fiji, Kiribati, Nauru, Papua New Guinea and Tuvalu in respect of the 1992 United Nations Framework Convention on Climate Change (*ibid.*, chap XXVII 7)) or that it "understands that …" (see the declarations made by Brazil when ratifying the United Nations Convention on the Law of the Sea (*ibid.*, chap XXI 6))

[238] See guideline 1.3.1.

[239] The text of the declaration appears in *Multilateral Treaties …* (footnote 37 above), chap XII 1 India summed up this episode in its response to the questionnaire on reservations (see footnote 39 above):

"When the Secretary-General notified the Inter-Governmental Maritime Consultative Organization (IMCO) [the name has been changed to "International Maritime Organization (IMO)"] of the instrument of ratification of India subject to the declaration, it was suggested that in view of the condition which was 'in the nature of a reservation' the matter should be put before the IMCO Assembly The Assembly resolved to have the declaration circulated to all IMCO members but until the matter had been decided, India was to participate in IMCO without vote. France and the Federal Republic of Germany lodged objections against the declaration made by India, France on the ground that India was asserting a unilateral right to interpret the Convention and Germany on the ground that India might in the future take measures that would be contrary to the Convention

"In resolution 1452 (XIV) adopted on 7 December 1959, the General Assembly of the United Nations, noting the statement made on behalf of India at the 614th meeting of its Sixth Committee (Legal) explaining that the Indian declaration on IMCO was a declaration of policy and that it did not constitute a reservation, expressed the hope 'that, in the light of the above-mentioned statement of India an appropriate solution may be reached in the Inter-Governmental Maritime Consultative Organization at an early date to regularize the position of India'.

"By a resolution adopted on 1 March 1960, the Council of the Inter-Governmental Maritime Consultative Organization, taking note of the statement made on behalf of India referred to in the foregoing resolution and noting, therefore, that the declaration of India has no legal effect with regard to the interpretation of the Convention 'considers India to be a member of the Organization'."

With regard to this episode, see, in particular, McRae, "The legal effect of interpretative declarations" (footnote 129 above), pp. 163–165; Horn, *Reservations and Interpretative Declarations …* (footnote 25 above), pp. 301–302; and Sapienza, *Dichiarazioni interpretative unilaterali …* (footnote 129 above), pp 108–113

[240] The text appears in *Multilateral Treaties …* (footnote 37 above), chap XII 1 Several Governments stated "that they assumed that it was a declaration of policy and did not constitute a reservation; and that it had no legal effect with regard to the interpretation of the Convention". Accordingly, "[i]n a communication addressed to the Secretary-General on 31 January 1962, the Government of Cambodia stated that '… the Royal Government agrees that the first part of the declaration which it made at the time of the acceptance of the Convention is of a political nature. It therefore has no legal effect regarding the interpretation of the Convention. The statements contained [in the third paragraph of the declaration], on the other hand, constitute a reservation to the Convention by the Royal Government of Cambodia'" (*ibid.*) With regard to this episode, see, in particular, McRae, "The legal effect of interpretative declarations" (footnote 129 above), pp 165–166, and Sapienza, *Dichiarazioni interpretative unilaterali …* (footnote 129 above), pp 177–178

[241] Although it did not formally reclassify the interpretative declaration of Switzerland in issue as a reservation, the Court examined "the validity of the interpretative declaration in question, *as in the case of a reservation**" (Judgment of 29 April 1988, *Belilos v. Switzerland* (see footnote 192 above), p 24, para 49) In the *Temeltasch* case, the European Commission of Human Rights was less cautious: completely (and intentionally) adhering to McRae's position ("The legal effect of interpretative declarations" (footnote 129 above), p 160), it "assimilated"

– likewise, in a text that is admittedly rather obscure, the Arbitral Tribunal that settled the dispute between France and the United Kingdom regarding the *Case concerning the delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic* considered that the third reservation by France concerning article 6 of the 1958 Convention on the Continental Shelf constituted "a specific condition imposed by the French Republic on its acceptance of the delimitation régime provided for in article 6", adding: "This condition, according to its terms, appears to go beyond mere interpretation."[242] This would seem to establish *a contrario* that it could have been a conditional interpretative declaration and not a reservation in the strict sense of the term.

(12) The fact remains that, even if it cannot be entirely "assimilated" to a reservation, a conditional interpretative declaration does come quite close, for as Reuter has written: "*[l']essence de la 'réserve' est de poser une* condition*: l'État ne s'engage qu'à la condition que certains effets juridiques du traité ne lui soient pas appliqués, que ce soit par l'exclusion ou la modification d'une règle ou par l'interprétation de celle-ci*" ("the essence of 'reservations' is to stipulate a *condition*: the State will commit itself only on condition that certain legal effects of the treaty are not applied to it, either by excluding or modifying a rule or by interpreting it").[243] There is support for this position in doctrine.[244]

(13) It follows that, as the Commission noted following detailed consideration of the matter, while conditional interpretative declarations do not have the same definition as reservations, they are subject to the same rules of form and substance as those applying to reservations. This is stated in the second paragraph of guideline 1.4. Consequently, it is unnecessary to mention conditional interpretative declarations in the remainder of this Guide: the legal regime of reservations is applicable to them.

(14) The Commission considered whether, instead of reproducing the long list of times at which a reservation (and, by extension, a conditional interpretative declaration) may be formulated, as in guideline 1.1, it might not be simpler and more elegant to use a general phrase such as "at the time of expression of consent to be bound". It does not seem possible to adopt this solution, however, since interpretative declarations, like reservations, may be formulated at the time of signature, even in the case of treaties in solemn form. In this case, however, and just as for reservations, conditional interpretative declarations must be confirmed at the time of expression of consent to be bound. There would appear to be no logical reason for a different solution as between reservations and conditional interpretative declarations to which the other States and international organizations must be in a position to react where necessary. Moreover, it will be noted that, in general, States wishing to make their participation in a treaty subject to a specified interpretation of the treaty generally confirm their interpretation at the time of expression of consent to be bound, when it has been formulated at the time of signature or at any earlier point in the negotiations.[245]

1.5 *Unilateral statements other than reservations and interpretative declarations*

Unilateral statements formulated in relation to a treaty which are not reservations nor interpretative declarations (including conditional interpretative declarations) are outside the scope of the present Guide to Practice.

Commentary

(1) Guideline 1.5 may be regarded as a "general exclusionary clause" purporting to limit the scope of the Guide to Practice to reservations, on the one hand, and to interpretative declarations *stricto sensu* (whether "simple" or "conditional"[246]), to the exclusion of other unilateral statements of any kind which are formulated in relation to a treaty, but which generally do not have as close a relationship with the treaty.

(2) As practice indicates, States and international organizations often take the opportunity, when signing or expressing their consent to be bound by a treaty, to make statements which relate to the treaty but seek neither to exclude or modify the legal effect of certain of its provisions (or of the treaty as a whole with respect to certain specific aspects) in their application to their author nor to interpret the treaty, and which are thus neither reservations nor interpretative declarations, whether "simple" or conditional.

(3) The United Nations online publication *Multilateral Treaties Deposited with the Secretary-General* contains numerous examples of such statements, concerning the

the notions of conditional interpretative declarations and reservations (Decision of 5 May 1982, *Temeltasch v. Switzerland* (see footnote 24 above), paras 72–73)

[242] Arbitral decision of 30 June 1977, *Case concerning the delimitation of the Continental Shelf between the United Kingdom* ... (see footnote 24 above), p 40, para 55

[243] Reuter, *Introduction au droit des traités* (footnote 28 above), p 71 The inherent conditional character of reservations is stressed in numerous doctrinal definitions, including that of the Harvard Law School (Research in International Law of the Harvard Law School, "Draft Convention on the Law of Treaties", AJIL, 1935, Supplement No. 4, p. 843; see also Horn, *Reservations and Interpretative Declarations* ... (footnote 25 above), p 35, and the examples cited) The definition proposed by Sir Humphrey Waldock in 1962 also specifically included conditionality as an element in the definition of reservations (see footnote 142 above); it was subsequently abandoned under circumstances that are not clear

[244] See McRae, "The legal effect of interpretative declarations" (footnote 129 above), p 172

[245] See the confirmation by the Federal Republic of Germany and the United Kingdom of their declarations formulated upon signing the 1989 Basel Convention on the control of transboundary movements of hazardous wastes and their disposal (see *Multilateral Treaties* ... (footnote 37 above), chap. XXVII.3); see also the practice followed by Monaco upon signing and then ratifying the 1966 International Covenant on Civil and Political Rights (*ibid.*, chap. IV.4); by Austria in the case of the European Convention on the protection of the archaeological heritage of 6 May 1969 (United Nations, *Treaty Series*, vol 788, p 240) or the European Community in regard to the Convention on environmental impact assessment in a transboundary context (*Multilateral Treaties* ... (footnote 37 above), chap XXVII 4) See also the declarations by Italy or the United Kingdom concerning the 1992 Convention on Biological Diversity (*ibid.*, chap XXVII 8)

[246] On this distinction, see guideline 1.4.

(8) As Roberto Baratta has pointed out:

[A]nche in ipotesi di riserve a norme poste dai menzionati accordi l'effetto di reciprocità si produce, in quanto né la prassi, né i princìpi applicabili in materia inducono a pensare che lo Stato riservante abbia un titolo giuridico per pretendere l'applicazione della disposizione da esso riservata rispetto al soggetto non autore della riserva. Resta nondimeno, in capo a tutti i soggetti che non abbiano apposto la stessa riserva, l'obbligo di applicare in ogni caso la norma riservata a causa del regime solidaristico creato dall'accordo.[2155]

[Even on the assumption of reservations to the rules enunciated in the above-mentioned agreements, the effect of reciprocity is produced, as neither practice nor the principles applicable suggest that the reserving State would have a legal right to call for the application of the provision to which the reservation relates by a subject which is not the author of the reservation. There nonetheless remains the obligation for all subjects which have not formulated the reservation to apply in all cases the rule to which the reservation relates, by virtue of the regime of solidarity established by the agreement.]

(9) This, moreover, was the thinking underlying the model clause on reciprocity adopted by the Committee of Ministers of the Council of Europe in 1980:

A Party which has made a reservation in respect of a provision of [the Agreement concerned] may not claim the application of that provision by any other Party; it may, however, if its reservation is partial or conditional, claim the application of that provision insofar as it has itself accepted it [2156]

(10) The second sentence of guideline 4.2.5 concerns the second exception to the general principle of the reciprocal application of reservations: a situation when "reciprocal application is not possible because of the content of the reservation".

(11) This situation arises, for example, in the case of reservations purporting to limit the territorial application of a treaty. Reciprocal application of such a reservation is quite simply not possible in practice.[2157] Similarly, reciprocal application of the effects of the reservation is also excluded if it was motivated by situations obtaining specifically in the reserving State.[2158] Thus, the reservation formulated by Canada to the Convention on psychotropic substances of 1971, purporting to exclude peyote[2159] from the application of the Convention, formulated solely because of the presence in Canadian territory of groups which use in their magical or religious rites certain psychotropic substances that would normally fall under the Convention regime,[2160] could not be invoked in its own favour by another party to the Convention unless it was confronted with the same situation.

(12) The principle of reciprocal application of reservations may also be limited by reservation clauses contained in the treaty itself. An example is the Convention concerning Customs Facilities for Touring and its Additional Protocol of 1954. Article 20, paragraph 7, of the Convention provides:

No Contracting State shall be required to extend to a State making a reservation the benefit of the provisions to which such reservation applies. Any State availing itself of this right shall notify the Secretary-General accordingly and the latter shall communicate this decision to all signatory and Contracting States.

Even though this particular clause does not in itself exclude the application of the principle of reciprocity, it deprives it of automaticity by making it subject to notification by the accepting State. Such notifications have been made by the United States of America in relation to the reservations formulated by Bulgaria, Romania and the Union of Soviet Socialist Republics to the dispute settlement mechanism provided for in article 21 of that Convention.[2161]

4.2.6 *Interpretation of reservations*

A reservation is to be interpreted in good faith, taking into account the intention of its author as reflected primarily in the text of the reservation, as well as the object and purpose of the treaty and the circumstances in which the reservation was formulated.

Commentary

(1) It is often difficult to specify to what extent treaty relations are modified by the establishment of a reservation[2162] or to what extent the effect of the principle of reciprocal application is excluded or limited,[2163] or even to determine whether a unilateral declaration presented as a reservation meets the definition of a reservation.

(2) Since reservations are unilateral acts, the Commission based itself on the guidelines for interpreting such acts contained in the Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, which it adopted in 2006.[2164] It should not be forgotten, however, that reservations are acts attached to a treaty, the legal effect of which they purport to modify or exclude. Consequently, the treaty is the context that should be taken into account for the purposes of interpreting the reservation. Guideline 4.2.6 combines these two ideas.

(3) With regard to unilateral acts, the warning by the International Court of Justice against mechanical transposition of the rules for the interpretation of treaties to unilateral acts should be borne in mind:

The Court observes that the provisions of that Convention may only apply analogously to the extent compatible with the *sui generis* character of the unilateral acceptance of the Court's jurisdiction.[2165]

[2155] Baratta, *Gli effetti delle riserve* ... (footnote 698 above), p. 294; see also Greig, "Reservations: equity as a balancing factor?" (footnote 28 above), p 140

[2156] Model Final Clauses for Conventions and Agreements concluded within the Council of Europe (article *e*, paragraph 3) (see footnote 2137 above). On this subject, see Majoros, "Le régime de réciprocité …" (footnote 388 above), p 90, and Horn, *Reservations and Interpretative Declarations* ... (footnote 25 above), pp 146–147

[2157] See Imbert, *Les réserves aux traités multilatéraux* (footnote 25 above), p 258, and Simma, *Das Reziprozitätselement* ... (footnote 2134 above), p 61

[2158] See Horn, *Reservations and Interpretative Declarations* ... (footnote 25 above), pp. 165–166; Imbert, *Les réserves aux traités multilatéraux* (footnote 25 above), pp 258–260 See, however, the more cautious ideas relating to such situations formulated by Majoros, "Le régime de réciprocité …" (footnote 388 above), pp. 83–84.

[2159] Peyote is a species of small cactus which has hallucinogenic psychotropic effects

[2160] *Multilateral Treaties* ... (footnote 37 above), chap VI 16

[2161] *Ibid.*, chap XI A 6 and A 7 See Riquelme Cortado, *Las reservas a los tratados* ... (footnote 150 above), p 212 (footnote 44)

[2162] See guideline 4.2.4 (Effect of an established reservation on treaty relations) and commentary thereto

[2163] See guideline 4.2.5 (Non-reciprocal application of obligations to which a reservation relates), in particular paragraph (11) of the commentary thereto

[2164] See footnote 249 above

[2165] *Judgment of 4 December 1998*, *Fisheries Jurisdiction (Spain v. Canada)* (see footnote 199 above), p 453, para 46

(4) It was in this spirit that the Commission elaborated principle No. 7 of the Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations:

> 7. A unilateral declaration entails obligations for the formulating State only if it is stated in clear and specific terms. In the case of doubt as to the scope of the obligations resulting from such a declaration, such obligations must be interpreted in a restrictive manner. In interpreting the content of such obligations, weight shall be given first and foremost to the text of the declaration, together with the context and the circumstances in which it was formulated [2166]

(5) This general approach is also found, *mutatis mutandis*, in guideline 4.2.6, which, in line with the case law of the International Court of Justice, places emphasis on the intention of the author as one of the main elements on which interpretation of the reservation should be based:

> At the same time, since a declaration under Article 36, paragraph 2, of the Statute, is a unilaterally drafted instrument, the Court has not hesitated to place a certain emphasis on the intention of the depositing State. Indeed, in the case concerning *Anglo-Iranian Oil Co.*, the Court found that the limiting words chosen in Iran's declaration were "a decisive confirmation of the intention of the Government of Iran at the time when it accepted the compulsory jurisdiction of the Court". ([*Anglo-Iranian Oil Co.*, *Preliminary Objection*, *Judgment*, *I. C. J Reports 1952*], p 107)
>
> The Court will thus interpret the relevant words of a declaration including a reservation contained therein in a natural and reasonable way, having due regard to the intention of the State concerned at the time when it accepted the compulsory jurisdiction of the Court The intention of a reserving State may be deduced not only from the text of the relevant clause, but also from the context in which the clause is to be read, and an examination of evidence regarding the circumstances of its preparation and the purposes intended to be served [2167]

(6) It is very clear from these paragraphs that the interpretation of a unilateral act aims to establish the intention of the author of the act. The text of the reservation is the primary indicator of intention.[2168] This approach is especially relevant in the case of reservations, since they are defined by the objective their author *purports* to attain.[2169]

(7) The intention of the reserving State or international organization can be derived in the first instance from the actual text of the reservation. The predominance of the text is confirmed in case law. Thus, in the case of *Boyce et al. v. Barbados*, the Inter-American Court of Human Rights was called upon to give its view on the effects of the reservation to the American Convention on Human Rights made by the defending State.[2170] The reservation reads as follows:

> In respect of [Article] 4(4) [of the Convention,] the criminal code of Barbados provides for death by hanging as a penalty for murder and treason. The Government is at present reviewing the whole matter of the death penalty[,] which is only rarely inflicted[,] but wishes to enter a reservation on this point inasmuch as treason in certain circumstances might be regarded as a political offence and falling within the terms of section 4(4)
>
> In respect of [Article] 4(5)[,] while the youth or old age of an offender may be matters which the Privy Council, the [then] highest Court of Appeal, might take into account in considering whether the sentence of death should be carried out, persons of 16 years and over or over 70 years of age may be executed under Barbadian law.[2171]

(8) Barbados maintained, *inter alia*, that its reservation to the Convention prevented the Court from ruling on issues of capital punishment, or on how such punishment was implemented. Invoking its advisory opinions of 1982 and 1983,[2172] the Court recalled:

> Firstly, in interpreting reservations the Court must first and foremost rely on a strictly textual analysis [2173]

Having examined the reservation by Barbados in this light, the Court arrived at the conclusion that

> the text of the reservation does not explicitly state whether a sentence of death is mandatory for the crime of murder, nor does it address whether other possible methods of execution or sentences are available under Barbadian law for such a crime. Accordingly, the Court finds that a textual interpretation of the reservation entered by Barbados at the time of ratification of the American Convention clearly indicates that this reservation was not intended to exclude from the jurisdiction of this Court neither the mandatory nature of the death penalty nor the particular form of execution by hanging. Thus the State may not avail itself of this reservation to that effect [2174]

The Court also pointed out that it

> has previously considered that "a State reserves no more than what is contained in the text of the reservation itself" [2175]

(9) Other elements should be taken into consideration for the purposes of determining the intention of the author of the reservation, including in particular the texts accompanying the formulation of the reservation, especially those explaining the reasons for the reservation,[2176] and possibly circumstances of its formulation (or, in the words of the International Court of Justice, "circumstances of its preparation")[2177] that may clarify the meaning of the reservation. Thus, in the case concerning the *Aegean Sea Continental Shelf (Greece v. Turkey)*, the Court based itself on:

– "the explanation of reservation (*b*) given in the *exposé des motifs*";[2178]

[2166] *Yearbook ... 2006*, vol. II (Part Two), p. 161; see also the commentary to this principle, *ibid.*, pp 164–165

[2167] *Judgment of 4 December 1998*, *Fisheries Jurisdiction* (see footnote 199 above), p 454, paras 48–49

[2168] See principle No. 7 of the the Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations (footnote 249 above)

[2169] See guideline 1.1.

[2170] *Boyce et al. v. Barbados*, judgment of 20 November 2007, *Preliminary Objection*, *Merits*, *Reparations and Costs*, Series C, No 169, paras 13–17

[2171] United Nations, *Treaty Series*, vol 1298, p 441

[2172] Advisory Opinion OC-2/82, 24 September 1982, *The effect of reservations on the entry into force of the American Convention on Human Rights (arts. 74 and 75)* (see footnote 2026 above), para. 35; Advisory Opinion OC-3/83, *Restrictions to the Death Penalty* (see footnote 197 above), paras 60–66

[2173] *Boyce et al. v. Barbados* (see footnote 2170 above), para 15

[2174] *Ibid.*, para 17

[2175] *Ibid.* See also Advisory Opinion OC-3/83, *Restrictions to the Death Penalty* (footnote 197 above), para 69

[2176] See guideline 2.1.2 (Statement of reasons for reservations) and commentary thereto, in particular paragraphs (4)–(5).

[2177] See paragraph 49 *in fine* of the judgment in *Fisheries Jurisdiction* (footnote 199 above), referred to in paragraph (5) above.

[2178] *Aegean Sea Continental Shelf* (see footnote 210 above), p 28, para 68

– "a document referred to by [the Greek] counsel as 'the *travaux préparatoires* of the reservation'"[2179] (actually a letter explaining the circumstances of the formulation of the Greek reservation);[2180]

– and "certain internal documents relating to the preparation of Greece's instrument of accession to the General Act";[2181]

– in the same spirit, the Court took into account "the general historical context in which reservations of questions relating to territorial status had come into use in the League of Nations period",[2182] which corresponds to the circumstances, in the broad sense of the term, in which the reservation was made.

All these exogenous elements were considered together by the Court in determining "the intention of the Greek Government at the time when it deposited its instrument of accession to the General Act".[2183]

(10) As indicated in guideline 4.2.6, the exogenous elements to consider in the interpretation of the reservation should include the object and purpose of the treaty, since the reservation is a non-autonomous unilateral act, which only produces an effect within the framework of the treaty. It is also important to recall that this is one of the criteria for the permissibility of the reservation: it is because a reservation has passed the test of permissibility that it is "established", and thus capable of producing the effects intended by its author. The reservation can only produce these effects precisely to the extent that it is compatible with the object and purpose of the treaty.

(11) The question is particularly significant in the case of reservations the compatibility of which with the object and purpose of the treaty is questionable and may depend on the precise meaning attributed to the reservation. If the permissibility of the reservation is to be preserved, and thereby the intention of the author, whose good faith must be presumed, it can only be preserved at the cost of heightened attention to the preservation of the object and purpose of the treaty. This interdependence was highlighted by the Court in its advisory opinion of 1951:

> The disadvantages which result from this possible divergence of views [as to the validity of the reservation] … are real; they are mitigated by the common duty of the contracting States to be guided in their judgment by the compatibility or incompatibility of the reservation with the object and purpose of the Convention It must clearly be assumed that the contracting States are desirous of preserving intact at least what is essential to the object of the Convention; should this desire be absent, it is quite clear that the Convention itself would be impaired both in its principle and in its application [2184]

(12) The criterion of the object and purpose of the treaty is the parameter for assessing the permissibility of the reservations, whether by a body established by the treaty itself, a dispute settlement body, or other States or contracting organizations.

(13) However, this does not mean that, as a general rule, reservations should be interpreted restrictively.[2185] The International Court of Justice has not generally referred to a restrictive interpretation in its interpretation of reservations.[2186]

(14) The position of human rights treaty monitoring bodies is, however, the opposite. Thus, the Inter-American Court of Human Rights, in the case of *Boyce et al. v. Barbados* referred to above, held that the realization of the object and purpose of the treaty required the Court to consider in a restrictive manner any limitation on those rights:

> Secondly, due consideration must also be assigned to the object and purpose of the relevant treaty which, in the case of the American Convention, involves the "protection of the basic rights of individual human beings". In addition, the reservation must be interpreted in accordance with Article 29 of the Convention, which implies that a reservation may not be interpreted so as to limit the enjoyment and exercise of the rights and liberties recognized in the Convention to a greater extent than is provided for in the reservation itself [2187]

The question therefore arises of whether, by their nature, human rights treaties require the application of specific principles of interpretation. It goes without saying that the answer to this question far exceeds the scope of the present Guide to Practice.

(15) One last indication demonstrates the substantive interdependence between the reservation and the treaty to which it relates: the International Court of Justice has, on occasion, applied the principle of dynamic interpretation to the terms of the reservation, on the same grounds as to the terms of the treaty itself. It follows that if the meaning of the latter evolves over time, that evolution also affects the identical terms appearing in the reservation, provided that the change does not turn out to be contrary to the intention of the author of the reservation, as manifested at the time the reservation was formulated:

> Once it is established that the expression "the territorial status of Greece" was used in Greece's instrument of accession [to the 1928 General Act] as a generic term denoting any matters comprised within the concept of *territorial status** under general international law, the presumption necessarily arises that its meaning was intended to follow the evolution of the law and to correspond with the meaning attached to the expression by the law in force at any given time. This presumption, in the view of the Court, is even more compelling when it is recalled that the 1928 Act was a convention for the pacific settlement of disputes designed to be of the most general kind and of continuing duration, for it hardly seems conceivable that in such a convention terms like "domestic jurisdiction" and "territorial status" were intended to have a fixed content regardless of the subsequent evolution of international law.[2188]

[2179] *Ibid.*, p 26, para 63

[2180] *Ibid.*, pp 26–27, paras 63–64

[2181] *Ibid.*, p 27, para 65

[2182] *Ibid.*, p 29, para 70

[2183] *Ibid.*, p 29, para 69

[2184] *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* (see footnote 604 above), pp 26–27

[2185] See the case concerning *Fisheries Jurisdiction* (footnote 199 above), p 453, para 45

[2186] The Court explicitly rejected the principle of restrictive interpretation of reservations accompanying optional declarations to Article 36 of the Statute: "There is thus no reason to interpret them restrictively" (International Court of Justice, *Fisheries Jurisdiction* (footnote 199 above), p. 453, para. 44); see also *Aegean Sea Continental Shelf* case (footnote 210 above), p 31, para 74

[2187] *Boyce et al. v. Barbados* (see footnote 2170 above), para 15 (footnotes omitted). See also Inter-American Court of Human Rights, Judgment, 1 September 2001, *Benjamin et al. v. Trinidad and Tobago*, *Preliminary Objections,* Series C, No 81, para 70

[2188] *Aegean Sea Continental Shelf* (footnote 210 above), p 32, para 77 See also the *Judgment of 13 July 2009*, *Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)* (footnote 1600 above), para 65

Annex 73

UNSC, 8333rd meeting (28 August 2018), UN doc. S/PV.8333 [extract]

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United Nations S/PV.8333

Security Council

Seventy-third year

Provisional

8333rd meeting
Tuesday, 28 August 2018, 3 p m.
New York

President:	Lord Ahmad/Ms. Pierce	(United Kingdom of Great Britain and Northern Ireland)
Members:	Bolivia (Plurinational State of)	Mrs. Cordova Soria
	China	Mr. Wu Haitao
	Côte d'Ivoire	Mr. Ipo
	Equatorial Guinea	Mrs. Mele Colifa
	Ethiopia	Ms. Guadey
	France	Mrs. Gueguen
	Kazakhstan	Mr. Umarov
	Kuwait	Mr. Alotaibi
	Netherlands	Mrs. Gregoire Van Haaren
	Peru	Mr. Meza-Cuadra
	Poland	Ms. Wronecka
	Russian Federation	Mr. Nebenzia
	Sweden	Mr. Orrenius Skau
	United States of America	Mrs. Haley

Agenda

The situation in Myanmar

18-26924 (E)

1992, another wave of violence forced 250,000 stateless Rohingya refugees to seek safety in neighbouring Bangladesh. Once again, Gul Zahar was among those who fled. There are today 900,000 stateless Rohingya refugees in Bangladesh. Gul Zahar, now 90-years-old, is sadly among them. Four decades following her initial flight, Gul lives in abject poverty in Bangladesh with the sole wish that her great grandchildren will have a better future. The need for such a future to transpire inside Myanmar has never been more urgent. If we fail to act now, Gul's grandchildren, like thousands of others, will be unable to escape the relentless cycle that generations of Rohingya have experienced.

Bangladesh's recent response — receiving more than 700,000 refugees in a matter of months and providing them safety — is one of the most visible and significant gestures of humanity in our time, but the needs are vast and the suffering acute. Much more international support is needed. Thanks to the efforts of the Bangladeshi Government, the host communities, relevant United Nations agencies, non-governmental organizations and the refugees themselves, lifesaving efforts have ensured that the Rohingya refugees have endured the monsoons largely unscathed. Yet, as Council members saw for themselves, they continue to live in squalid conditions. With only 33 per cent of the refugee operation funded — amounting to less than 70 cents per person per day — that is not surprising. Rather, it is quite embarrassing. Many Bangladeshi villagers living nearby, with very little to call their own, have been helping the Rohingya refugees over the past year. If people with so little can step up, why can we not do better? Refugees need to feed their families. They need clean water and sanitation facilities to wash, cook and clean. They need a secure shelter to weather the monsoons and the heat. Their children need an education. Their grandparents need to be cared for. But they need more than just food and water, informal schools and temporary shelter. They need a future.

In the refugee settlements of Bangladesh today, women who were raped in Myanmar are now giving birth to children. Those children, already burdened by statelessness, are likely to carry that stigma for the rest of their lives. Many women like Laila, along with their children, continue to be vulnerable to abuse and exploitation. Many continue to battle the scars of trauma and injury, which they received before and during their flight to Bangladesh. It is imperative that Governments, development and humanitarian agencies, the private sector and individuals work in solidarity to find innovative ways to help the refugees and the Bangladeshi host communities.

The focus of our efforts must be to provide much-needed support inside Bangladesh, while working to ensure that conditions in Myanmar are conducive to returns. The many refugees with whom I spoke consider Myanmar their home, but they have real, deep fears about returning there. The denial of their right to move, their right to marry, their right to work and their right to health care and education renders them among the most vulnerable people on the planet. Refugees move back home when it is safe and secure to do so. The Rohingya cannot return to the very conditions they were forced to flee. They cannot settle for half solutions. They must know that they belong. A clear pathway to full citizenship is essential. This is not a luxury. This is not a privilege. This is a basic right that all of us here enjoy, which the Rohingya do not.

I implore the Council not to forget this imperative, support all efforts to make it a reality and, in the meantime, encourage more robust international support needed to meet urgent and pressing needs within Bangladesh. My mind often returns to Laila and her neighbours. Did she find out what happened to her husband? Did her shared temporary shelter survive the monsoons? Did she manage to celebrate Eid al-Fitr last week? Will her young son Yousuf be able to return home to Myanmar and go to school one day? Or, like Gul Zahar, will he too suffer an endless cycle of fear and forced displacement?

Together, we need to change the future of Laila, Yousuf, Gul Zahar and of the Rohingya living in Myanmar, Bangladesh and beyond. There are no short cuts. There are no alternatives. We have failed the Rohingya before. Please, let us not fail them again.

The President: I thank Ms. Blanchett for her very poignant and moving briefing.

I shall now make a statement in my capacity as the Minister of State for the Commonwealth and the United Nations of the United Kingdom of Great Britain and Northern Ireland.

The plight of the Rohingya community is one of the largest refugee crises in recent history, and it is one of the most pressing humanitarian and human rights crises facing the Security Council today. One year since the Rohingya population of Rakhine state

was subjected to a campaign of the most truly horrific violence, resulting in grave violations of their human rights and expulsion and deportation from their homes, the Council has a duty to ensure that they receive justice and the prospect of a peaceful future. The report of the Independent International Fact-finding Mission on Myanmar (A/HRC/39/64) issued yesterday by the Human Rights Council is the most authoritative account to date of the crimes committed against the Rohingya community. The report details widespread rape and murder committed by the Burmese military, the systemic oppression and persecution they have suffered for many years, and the patterns of violence and violations committed elsewhere in the country.

The Council is charged by the international community with the primary responsibility for the maintenance of international peace and security. Crimes against humanity, such as those detailed in the Fact-Finding Mission's report, threaten international peace. They threaten international security. Forced deportations across borders, such as those that the Rohingya suffered crossing into Bangladesh, are unfriendly acts, but they also threaten international peace and security. It is therefore incumbent upon the Council that it consider the report in depth, once the Fact-Finding Mission has made its final presentation to the Human Rights Council in September.

But let us be clear: those most affected by the crisis now reside in Bangladesh. As we already heard, with more than 700,000 Rohingya refugees joining more than 300,000 displaced people in previous rounds of violence, Bangladesh, together with the United Nations and other humanitarian organizations, has saved many thousands of lives. Bangladesh, working together with the United Nations and international non-governmental organizations, has taken significant steps to mitigate the worst effects of the monsoon season in recent months. And as we already heard — indeed, so movingly from Ms. Blanchett — the Rohingya need our continued support. Their needs range from food, shelter and clean water, to education, livelihoods and specialized assistance, We must not forget that they need specialized support and assistance for the victims of sexual violence. The United Nations joint response plan remains desperately underfunded, and it is imperative that we all step up and play our part.

But the solution to the crisis — let us be clear — lies in Burma. The Rohingya community deserves justice. The Fact-Finding Mission has concluded that what happened in Rakhine last year warrants

> "the investigation and prosecution of senior officials in the Tatmadaw chain of command, so that a competent court can determine their liability for genocide in relation to the situation in Rakhine State." (*A/HRC/39/64, para. 87*)

With so much at stake, it is the Council that has a duty to ensure that there is no impunity for such acts.

As Prime Minister Teresa May's Special Representative on Preventing Sexual Violence in Conflict, let me assure the Council, let me assure Rohingya community: this is a key priority for our Government, for our Prime Minister and for myself. The Rohingya must be able to return home to Rakhine safely, voluntarily and, importantly, with dignity. That means more than returning to internally displaced persons camps on the Burmese side of the border, but real progress towards a more just long-term solution and state of affairs in Rakhine.

As a result of the Council's concerted action, though, we have seen some steps forward. The Burmese Government has engaged with the Special Envoy of the Secretary-General, Ms. Christine Schraner Burgener, whose diplomatic work we support. It has signed a memorandum of understanding with the Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Development Programme (UNDP). It has established a commission of inquiry to look into reports of human rights violations. Those steps are welcome. They have not been easy for the civilian Government, whose action remains constrained by the military, but more needs to be done. The steps taken are not enough. The Burmese authorities need to provide UNHCR and UNDP unconditional and unqualified access to northern Rakhine. Until those United Nations agencies can operate effectively, it is impossible to argue that conditions in Rakhine are anywhere near what is required for the safe, voluntary and dignified repatriation that the Council has called for.

There is an urgent need for domestic acceptance and accountability in Burma. It is essential that the Burmese Government set out how its commission of inquiry will be able to investigate those crimes with full impartiality, how it will access United Nations information and how it will be linked to a judicial process to hold accountable those responsible — and let us be clear: particularly those in the military. It is

far from clear that any mechanism established by the Burmese authorities can do that, which is why the United Kingdom supports keeping open the option of justice delivered through international mechanisms.

We need to see practical progress on implementing the Rakhine Advisory Commission's recommendations. That includes recommendations on economic development, which are part of the solution, but it also includes those related to the rights of the Rohingya, including a pathway to citizenship. Those recommendations taken comprehensively, as they were set out by the revered and respected late Kofi Annan, remain the best blueprint for a long-term solution in Rakhine.

What does it mean for us? What does it mean for the Security Council? It means, in our view, that the Council should do three things. First, it should continue to assist Bangladesh and the United Nations in providing protection and assistance to the Rohingya population and their host communities. Secondly, it should take concerted action to push for justice and the prospect of a peaceful future, which the Rohingya community deserves. That includes holding a serious discussion on the conclusions of the Fact-Finding Mission's report. Thirdly, it should support those in Burma who are pushing for progress. But we should also be prepared to use the full range of tools at the Council's disposal to apply pressure against those, including the Burmese military, who obstruct it. The United Kingdom has done that within the European Union, where we have sanctioned seven senior Burmese military officials.

But we all accept that this crisis is complex and has deep roots. It will not be solved overnight. But let us also be clear: it will not be solved without continued engagement and action from the Council. As we mark one year on from the violence of August 2017, therefore, the Council should shoulder its responsibility and do justice to the gravity of the attacks on the Rohingya community. We should not be just discussing and debating. We need to be acting, acting to bring an end to the appalling ethnic cleansing, to help those suffering refugees and bring justice for the victims of those appalling crimes.

I appeal to all fellow members. Let us put aside our differences. Let us act on the principles of the Charter of the United Nations and on our obligations in front of us. Let us act in the interests of Leila, in the interests of Yousef and in the interests of tens of thousands of Leilas and Yousefs. Let us act for the sake of humankind.

I now resume my functions as President of the Council.

Mrs. Gueguen (France) (*spoke in French*): Allow me, first of all, to warmly thank you, Mr. President, for having taken the initiative of convening this meeting almost a year to the day after the beginning of the crisis in Rakhine state. I would also like to commend the personal commitment of the Secretary-General in drawing attention to and mobilizing international action to be taken on behalf of this tragedy. I would also like to warmly thank the Goodwill Ambassador for the Office of the United Nations High Commissioner for Refugees, Ms. Cate Blanchett, and Assistant Secretary-General Tegegnework Gettu for their briefings on this situation, which deserves the continued and resolute attention of the Security Council.

Almost a year ago, before the General Assembly, the President of France denounced the ethnic cleansing suffered by the Rohingya (see A/72/PV.4). Since then, France has consistently stressed its concern about the serious violations of human rights and international humanitarian law committed in an organized, coordinated and systematic manner in Rakhine state. I would like to make three observations today.

First, commitments have been made by the Burmese authorities and must now be fully implemented. While those are first steps that should be encouraged, the progress seen on the ground remains very limited and is not commensurate with the scale and gravity of the violations of human rights and international humanitarian law that have been committed. In that regard, France is very concerned by the conclusions of the advance version of the report of the Human Rights Council's Independent International Fact-Finding Mission in Myanmar (A/HRC/39/64), according to which the Burmese army could be accused of genocide, crimes against humanity and war crimes, which fall within the jurisdiction of the International Criminal Court. France calls on the international community to undertake determined action to collect and protect evidence, and to ensure that those responsible for the crimes committed against the Rohingya population be brought to justice.

France also reiterates its call on the Burmese authorities to cooperate with the Special Rapporteur and the United Nations Fact-Finding Mission. We have

taken note of Burma's establishment of a commission of inquiry on human rights violations. However, at this stage, we have no information guaranteeing the independence or the impartiality of that mechanism, or on the protection provided to witnesses. We also condemn the serious violations of human rights and international humanitarian law committed against children. We hope that the Special Representative of the Secretary-General for Children and Armed Conflict, Mrs. Virginia Gamba de Potgieter, who recently visited the country, will soon be able to brief the Council on her mission and provide it with an update.

We also welcome the conclusion in June of a memorandum of understanding with the United Nations Development Programme and the Office of the United Nations High Commissioner for Refugees, which is an essential step to enable the voluntary, safe, dignified and sustainable return of Rohingya refugees when the time comes. Nonetheless, we are concerned about ongoing restrictions of access. Only unimpeded access to all affected villages and communities will allow us to determine whether the conditions for such returns have been met.

With regard to the recommendations of the Advisory Commission on Rakhine State, led by the late Secretary-General Kofi Annan, figures are regularly put forward by the Burmese authorities, but we have very little concrete information on how the measures are actually being implemented. France reiterates in particular the importance of the recommendations related to the issue of citizenship, revising the 1982 law and ensuring equal rights for all members of the Rohingya community. We also support the recommendations concerning the freedom of movement, media access and socioeconomic development in Rakhine state.

Secondly, I would like to focus briefly on the humanitarian dimension of the crisis. France, both in its national capacity and within the European Union, is providing support to Bangladesh, which continues to host on its territory, with admirable generosity, almost 1 million Rohingya refugees living in particularly precarious conditions. The Office of the United Nations High Commissioner for Refugees and all of the humanitarian organizations and United Nations agencies concerned have done outstanding work. The international community must continue to support Bangladesh and humanitarian agencies in accordance with three priorities: first, by increasing its contributions to the United Nations humanitarian response plan, which is currently funded at only 33 per cent; secondly, by continuing to take the measures necessary to protect the Rohingya people from security and health risks in camps; and, thirdly, by continuing to support Bangladesh, humanitarian actors and local host populations to make the living conditions of the Rohingya refugees as sustainable as possible, while preserving Bangladesh's national prospects for economic development. Special attention must be paid to the needs of children, particularly with regard to education, and to the needs of women who have suffered untold violence. I still think about the images and testimonies of the women whom we met during our visit last spring to Cox's Bazar.

My final point is that the Security Council and the international community must remain fully committed to ensuring close monitoring of the full implementation of November's presidential statement (S/PRST/2017/22) and of the tripartite agreement concluded among Burma's civilian Government, the Office of the United Nations High Commissioner for Refugees and the United Nations Development Programme regarding the return of refugees.

The response to the tragedy of the Rohingya requires addressing the root causes of the crisis. It also requires justice to be done. The Council had an opportunity several weeks ago to thoroughly exchange views with the Special Envoy of the Secretary-General, Ms. Christine Schraner Burgener, and to express to her its full support in the discharge of her duties. We encourage the Burmese authorities to continue to collaborate closely with the Special Envoy in order to arrive at a lasting solution. The week of high-level general debate of the General Assembly, to be held next month, will also be an opportunity to pursue mobilization. In the absence of tangible progress on the ground over the coming weeks, we will need to carefully consider what new steps the Council could take to respond to the Rohingya refugee crisis.

Mr. Orrenius Skau (Sweden): Halabja 1988, Srebrenica 1995, Darfur 2003. The list of examples in modem history where violence has triumphed is long, too long. Regrettably, it seems a new name will now be added to that tragic list: Rakhine 2017. The reports of systematic and widespread human rights violations and abuses against the Rohingya community in Rakhine state, as well as other gross violations of international law committed in Kachin and Shan states, cannot be neglected. We have seen clear indications of crimes

Annex 74

UNGA, Third Committee, *Official Records*, Seventy-third session, Summary record of the 30th meeting (23 October 2018), UN doc. A/C.3/73/SR.30 [extract]

Available at:

http://undocs.org/A/C.3/73/SR.30

United Nations A/C.3/73/SR.30

General Assembly
Seventy-third session
Official Records

Distr.: General
8 January 2019
Original: English

Third Committee

Summary record of the 30th meeting
Held at Headquarters, New York, on Tuesday, 23 October 2018, at 3 p.m.

Chair:	Mr. Saikal	(Afghanistan)
later:	Ms. Shikongo (Vice-Chair)	(Namibia)
later:	Mr. Saikal	(Afghanistan)

Contents

18-17649 (E)

emerge in Myanmar. It was disturbing that Muslim communities in other parts of Myanmar were also facing multiple forms of discrimination.

19. **Ms. Levin** (United States of America) said that her country called upon Myanmar to ensure accountability for those responsible for human rights violations and abuses and to remove them from positions of authority. Myanmar should also give unrestricted access to the United Nations, humanitarian organizations and the media, and fully implement the recommendations of the Advisory Commission on Rakhine State. The United States called for the immediate and unconditional release of those unjustly imprisoned, including the Reuters journalists Wa Lone and Kyaw Soe Oo and the Eleven Media journalists Kyaw Zaw Lin, Nayi Min and Phyo Wai Win. The establishment of civilian control of the military and other constitutional reforms were essential to advance the democratic transition and end military impunity. How could the international community support such reforms?

20. **Mr. Kelly** (Ireland) said that his country joined the calls for the Government of Myanmar to reengage with the mandate of the Special Rapporteur. It also urged Myanmar to engage with the independent impartial investigative mechanism established at the most recent session of the Human Rights Council to ensure full accountability for perpetrators and justice for victims and to begin the journey towards lasting peace in the country. Lastly, Ireland urged the Government to restore the citizenship of the Rohingya and to grant them the full protections attached to citizenship. He asked what more could be done to address the emerging risks related to long-term emergency refugee camps.

21. **Mr. Arbeiter** (Canada) said that his country called for the investigation and prosecution of those responsible for atrocities, including genocide and crimes against humanity. In the wake of decades of oppressive authoritarian rule, Myanmar had repeatedly professed its desire to cultivate a peaceful, democratic federal union, but a true commitment to such values unfortunately had yet to be seen. Strengthening the rule of law and respect for diversity were critical components of a successful democratic transition, and Canada was prepared to support all efforts to bring people together to achieve that goal. His delegation would be interested to know in which areas there had been the most progress and which areas had suffered the most setbacks.

22. **Ms. Přikrylová** (Czechia) said that her country stood ready to assist the Government of Myanmar in the complicated process of democratic transition and, in that respect, had repeatedly stressed the need to reform the legal system, in particular to amend controversial laws misused against the media and civil society. Czechia reiterated its serious concern about the sentencing of the two Reuters journalists to seven years of imprisonment in September 2018. It urged the Government to end the persecution of journalists, human rights activists and lawyers who were defending them, including the human rights lawyer Khin Kyaw.

23. **Ms. Wundsch** (Germany) said that her country had repeatedly urged the Government of Myanmar to cooperate fully with the Special Rapporteur and regretted that those calls remained unanswered. The crimes committed in Myanmar would not have been possible without widespread hatred within society, fuelled by extremist forces within the majority population. She asked whether the international community could positively influence the domestic debate and strengthen reconciliation and mutual understanding.

24. **Ms. Bird** (Australia) said that her delegation called upon Myanmar to restore cooperation with the Special Rapporteur without delay. Australia urged all parties in Myanmar to bring an end to the fighting, protect civilians and allow safe and unfettered access for humanitarian actors. While acknowledging progress since 2011, Australia was concerned by the ongoing detention of Reuters journalists. Their early release would signal important support for the democratic principle of media freedom. Australia reiterated its commitment to support Myanmar in its efforts to address ongoing human rights challenges, achieve national peace and reconciliation, and transition to full democracy.

25. **Mr. Ahmad Tajuddin** (Malaysia) said that, as a host to some 70,000 Rohingya refugees, his country paid close attention to the humanitarian crisis in Myanmar. While recognizing the principle of non-interference, Malaysia noted that the short- and long-term consequences of that crisis had an impact on the entire region. Under international law, the Government of Myanmar had the primary responsibility to take action against the perpetrators of the crimes committed against the Rohingya community and other minorities in the country. In the light of the legal and institutional obstacles to accountability in Myanmar, Malaysia would support the establishment of an appropriate international judicial mechanism to try the individuals responsible for those crimes. Malaysia also supported the establishment of an independent mechanism in line with Human Rights Council resolution 39/2.

26. **Mr. Dang** Dinh Quy (Viet Nam) said that it was urgent to restore normal conditions in Rakhine State,

Annex 75

UNSC, 8381st meeting (24 October 2018), UN doc. S/PV.8381 [extract]

Available at:

http://undocs.org/S/PV.8381

French version available at:

http://undocs.org/fr/S/PV.8381

United Nations S/PV.8381

Security Council

Seventy-third year

Provisional

8381st meeting
Wednesday, 24 October 2018, 3 p.m.
New York

President:	Mr. Llorentty Solíz	(Bolivia (Plurinational State of))
Members:	China	Mr. Ma Zhaoxu
	Côte d'Ivoire	Mr. Adom
	Equatorial Guinea	Mr. Ndong Mba
	Ethiopia	Mr. Amde
	France	Mr. Delattre
	Kazakhstan	Mr. Tumysh
	Kuwait	Mr. Almunayekh
	Netherlands	Mrs. Gregoire Van Haaren
	Peru	Mr. Meza-Cuadra
	Poland	Ms. Wronecka
	Russian Federation	Mr. Nebenzia
	Sweden	Mr. Skoog
	United Kingdom of Great Britain and Northern Ireland	Ms. Pierce
	United States of America	Mrs. Haley

Agenda

The situation in Myanmar

Letter dated 16 October 2018 from the representatives of Côte d'Ivoire, France, Kuwait, the Netherlands, Peru, Poland, Sweden, the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations addressed to the President of the Security Council (S/2018/926)

Letter dated 18 October 2018 from the Permanent Representatives of Bolivia (Plurinational State of), China, Equatorial Guinea and the Russian Federation to the United Nations addressed to the President of the Security Council (S/2018/938)

18-33774 (E)

we want to avoid the duplication of the efforts of the principal organs of the United Nations in deeds rather than words. We also believe that discussing the report in the Council could cast doubt on the remit of the Human Rights Council, to which the Mission is accountable.

We would once again like to stress that the key to resolving the problem of the Rohingya refugees is in bilateral cooperation between Myanmar and Bangladesh. The role of the international community consists in providing assistance to Naypyidaw and Dhaka in implementing the existing agreements.

In the light of this, we will vote against holding the proposed briefing to discuss the conclusions of the fact-finding mission on Myanmar, and we call on other delegations to do the same.

Ms. Pierce (United Kingdom): I would like to make a statement on behalf of the United Kingdom, Côte d'Ivoire, France, Kuwait, the Netherlands, Peru, Poland, Sweden and the United States of America.

Mr. President, we have read carefully the letter that you and other colleagues sent on 18 October (S/2018/938). We have requested the Chair of the United Nations fact-finding mission on Myanmar to brief us today. The report produced by the Mission (A/HRC/39/64) is the most authoritative and comprehensive account of the human rights violations that have occurred in the country since 2011. It details in particular the events that took place in Rakhine state on and around 25 August 2017 and led to the forcible displacement of more than 725,000 refugees across an international border into Bangladesh.

As we will hear, the Fact-Finding Mission's findings are of the gravest nature. The report concludes that "gross human rights violations" and "serious violations of international humanitarian law" have been committed in Myanmar since 2011 and that many of these violations "undoubtedly amount to the gravest crimes under international law".

It makes a specific recommendation to the Security Council to ensure accountability for crimes under international law committed in Myanmar. Ensuring the prevention of such crimes — genocide, war crimes and crimes against humanity — is one of the reasons why the United Nations and the Security Council were established in the first place. As members of the Security Council, we are today faced with a situation that clearly endangers international peace and security, and also a specific request for the Council to act.

It is therefore absolutely without doubt the Security Council's responsibility to hear the allegations concerning the gravest crimes under international law related to the situation and to deliberate on how to proceed, and so we vote in favour of holding this meeting.

The President (*spoke in Spanish*): I wish to draw the attention of Council members to document S/2018/926, which contains a letter dated 16 October 2018 from the Representatives of Côte d'Ivoire, France, Kuwait, the Netherlands, Peru, Poland, Sweden, the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations addressed to the President of the Security Council, and document S/2018/938, which contains a letter dated 18 October 2018 from the Permanent Representatives of the Plurinational State of Bolivia, China, Equatorial Guinea and the Russian Federation to the United Nations addressed to the President of the Security Council.

In the light of the views expressed in documents S/2018/926 and S/2018/938 and the comments made by members of the Security Council, I intend to put the provisional agenda to the vote.

Accordingly, I shall put it to the vote now.

A vote was taken by show of hands.

In favour:

Côte d'Ivoire, France, Kuwait, Netherlands, Peru, Poland, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America

Against:

Plurinational State of Bolivia, China, Russian Federation

Abstaining:

Equatorial Guinea, Ethiopia, Kazakhstan

The President (*spoke in Spanish*): The provisional agenda received 9 votes in favour, 3 votes against and 3 abstentions. The provisional agenda has been adopted.

I now give the floor to members wishing to make statements following the voting.

I shall now make a statement in my capacity as the representative of the Plurinational State of Bolivia.

Annex 76

UNGA, *Official Records*, Seventy-third session, 27th plenary meeting (29 October 2018), UN doc. A/73/PV.27 [extract]

Available at:

http://undocs.org/A/73/PV.27

French version available at:

http://undocs.org/fr/A/73/PV.27

United Nations A/73/PV.27

General Assembly

Seventy-third session

Official Records

27th plenary meeting
Monday, 29 October 2018, 10 a.m.
New York

President: Ms. Espinosa Garcés. . . . . (Ecuador)

In the absence of the President, Mr. Korneliou (Cyprus), Vice-President, took the Chair.

The meeting was called to order at 10.10 a.m.

Agenda item 77

Report of the International Criminal Court

Note by the Secretary-General (A/73/334)

Reports of the Secretary-General (A/73/333 and A/73/335)

Draft resolution (A/73/L.8)

The Acting President: I shall now make a statement on behalf of the President of the General Assembly.

"This year's debate on the report of the International Criminal Court (ICC) (see A/73/334) coincides with the twentieth anniversary of the Rome Statute. This is therefore an important opportunity for the international community to assess the progress enabled by the adoption of the Rome Statute and to reflect on the commitment to putting an end to impunity for the most serious and most heinous crimes.

"The Rome Statute delivered a message: it expressed to the people of the world that we will support victims, that we will fight impunity, that we will respond to acts of genocide and crimes against humanity and that we will not tolerate war crimes or crimes of aggression. Twenty years later, we would be wise to recall the united stance of the international community in standing up for all people, everywhere.

"While the primary duty to exercise criminal justice remains with States, the ICC has become an indispensable part of the overall architecture. For many around the world, the very existence of the Court is indicative of humankind's will to protect people, pursue those who would do us harm and protect and promote human rights. In that regard, it is important to recognize that the Court is much more than an instrument of prosecution. Its existence also serves as a deterrent and a tool for the prevention of international crimes.

"By extension, the Court thereby helps to maintain stable societies that are able to protect human rights and pursue sustainable development. As acknowledged by the General Assembly in its resolution 68/305, the Court is a core element of

> 'a multilateral system that aims to end impunity, promote the rule of law, promote and encourage respect for human rights, achieve sustainable peace and further the development of nations'.

"If the wars and atrocities of our history have taught us anything, it is that our shared peace and prosperity depend on multilateral efforts and institutions such as the ICC. If we are to protect, defend and stand up on behalf of those most vulnerable in their time of need, we must stand behind and in support of those very institutions and the principles that guide them."

18-34755 (E)

Mr. Petersen (Denmark): I have the honour to speak on behalf of the five Nordic countries, Finland, Iceland, Norway, Sweden and my own country, Denmark.

Let me start by thanking the International Criminal Court (ICC) for its annual report to the United Nations (see A/73/334). I would also like to thank Judge Chile Eboe-Osuji, President of the ICC, for his thorough briefing on the main issues of the report and for putting the work of the ICC into a broader context. We fully subscribe to his final assertion that it is both necessary and possible to strengthen the ICC.

At its twentieth anniversary, the ICC remains an essential institution, not only for promoting respect for international criminal justice but also for advancing post-conflict peacebuilding and reconciliation. The Court is a fundamental part of a rules-based international order and the centrepiece for accountability for the most serious crimes in international law. As we recognize its importance as a permanent, independent and impartial criminal court, we also stress that this is a crucial moment for all of us to speak up for the Court and its mandate to provide justice to victims of international crimes.

The desire to hold perpetrators of the most serious crimes to account is shared by States all over the world. The success of the Court depends on cooperation with other stakeholders, and many States and international organizations provide important contributions to the Court. However, it is a continued cause for concern that the number of outstanding arrest warrants remains high. We strongly urge all States to cooperate fully and effectively with the Court, in line with the Rome Statute and all applicable Security Council resolutions.

The Court's promise of justice for victims corresponds with the reach of its jurisdiction. The Nordic countries continue to support and work diligently for universal membership of the ICC. The ICC needs more States parties, not fewer. We stand ready for a constructive discussion about concerns that some States parties may have and encourage and invite States parties with these concerns about the Court to seek solutions within the framework and fundamental principles of the Rome Statute. Continued dialogue is of key importance.

Let me in this forum make particular note of the ongoing cooperation between the United Nations and the ICC as described in the report. We share the Court's strong appreciation of the crucial support and cooperation of the senior leadership of the United Nations. We welcome the ongoing high-level consultations between the principals of the Court and senior United Nations officials. This dialogue also sets a course for more concrete areas of cooperation, including a stronger cooperation at the field level and supportive policy statements from relevant United Nations bodies.

Enhanced cooperation between the Court and the Security Council is still called for. This is true in particular in cases of non-cooperation with the ICC as well as for strengthened follow-up of situations referred to it by the Security Council. We also note with great concern that the Security Council has been unable to refer the situation in Syria to the ICC, and we strongly urge members of the Council to continue efforts in this regard. Specifically, with respect to the situation in Syria, the Nordic countries will continue to support the work of the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011. We encourage others to do the same.

The situation in Myanmar, and in particular the reported gross violations of international human rights law and international humanitarian law that have taken place in Rakhine state, is a cause for great concern. Earlier this autumn, as an important step towards accountability, the Human Rights Council decided to establish an independent mechanism to collect, consolidate, preserve and analyse evidence of some of the most serious international crimes and violations of international law that have been perpetrated since 2011 in Myanmar, and to prepare files in order to facilitate and expedite future fair and independent criminal proceedings. However, a referral by the Security Council remains the most robust means of achieving accountability in Myanmar.

The full realization of the rights of victims is an important aspect of the continued success and relevance of the Court. We commend the important work of the ICC Trust Fund for Victims. We note with appreciation its work in providing support and rehabilitation to victims of sexual and gender-based crimes. The Nordic countries have consistently supported the Trust Fund, and we encourage States and other entities to contribute to it as well.

Annex 77

UNGA, *Official Records*, Seventy-third session, 28th plenary meeting (29 October 2018), UN doc. A/73/PV.28 [extract]

Available at:

http://undocs.org/A/73/PV.28

French version available at:

http://undocs.org/fr/A/73/PV.28

United Nations A/73/PV.28

General Assembly
Seventy-third session

Official Records

28th plenary meeting
Monday, 29 October 2018, 3 p.m.
New York

President: Ms. Espinosa Garcés. . . . . (Ecuador)

In the absence of the President, Ms. Al-Thani (Qatar), Vice-President, took the Chair.

The meeting was called to order at 3 p.m.

Agenda item 77 *(continued)*

Report of the International Criminal Court

Note by the Secretary-General (A/73/334)

Reports of the Secretary-General (A/73/333 and A/73/335)

Draft resolution (A/73/L.8)

Ms. Brink (Australia): This year we celebrate the twentieth anniversary of the Rome Statute of the International Criminal Court (ICC). That treaty is a remarkable achievement. It is the product of a common resolve, forged by the horrors of the previous century, to create a permanent international court to prosecute and punish those responsible for the most egregious international crimes.

We also mark another milestone this year, the activation of the ICC's jurisdiction over the crime of aggression. The Court is now empowered to exercise jurisdiction over the four core international crimes — war crimes, crimes against humanity, genocide and aggression. It is worth emphasizing that the ICC does not operate in isolation. It is part of an international criminal justice system, the Rome Statute system. The ICC's role is to step in only where national jurisdictions are unable or unwilling to act.

As a strong supporter of accountability and a long-standing supporter of the ICC, Australia will continue to work with all States parties to ensure that the Court is as strong an institution as it needs to be to fulfil its mandate. We encourage Member States not yet party to the Rome Statute to consider ratifying it, particularly non-parties in our own region of the Indo-Pacific.

At their core, the ICC and the United Nations are striving to achieve the same goals. One of the primary purposes of the Charter of the United Nations — the maintenance of international peace and security — aligns with those of the Rome Statute. History has demonstrated clearly that sustainable peace and impunity for serious international crimes rarely go hand in hand. All too often, impunity catalyses conflict.

The interrelationship between the mandates of the United Nations and the ICC makes the Court a key partner for the United Nations, particularly as the United Nations pivots to focus more on prevention. As its key partner, it is critical to ensure that the United Nations provides the ICC with the support it needs to deliver on its mandate.

We welcome the efforts of the United Nations so far and encourage the Secretary-General to continue to enhance cooperation under the Relationship Agreement. We have heard the Prosecutor's repeated requests for effective Security Council follow-up and support with respect to situations referred to the Court by the Council. It is essential that the Council not approach ICC referrals in a set-and-forget frame of mind. Its ongoing political support for the work of the ICC is

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the report by its President and today's debate on the agenda item.

In its remarkable activity since the presentation of the previous report (see A/72/PV.36), the Court has once again demonstrated that it is in fact a fundamental tool in the fight against impunity, the promotion of human rights and the consolidation of the rule of law at the international level.

Within the framework of the twentieth anniversary of the Rome Statute, Argentina renews its ongoing commitment to the Court by remaining actively involved in the mechanisms envisaged by the Assembly of States Parties and through its support for the goal of achieving the universality of the Statute.

Argentina has demonstrated its support in various ways, but we are particularly proud to have been the first State party to conclude the four cooperation agreements suggested by the Court. Similarly, Argentina has also ratified the Kampala amendments on the crime of aggression and therefore welcomes the activation of the Court's jurisdiction over that crime. That activation completes the legal edifice that is the Court, reaffirming the prevalence of law and justice over the use of force in international relations.

I would now like to discuss the relationship between the Court and the United Nations. The relationship between our Organization and the Court is crucial, while it must always respect the judicial independence of the Court. In that context, we reiterate some of the concerns that Argentina has regarding the referral of situations by the Security Council to the Court, particularly in terms of their financial cost. That cost has so far been borne exclusively by States parties to the Statute of the Court, despite the clear rules contained in the Rome Statute and the Relationship Agreement between the International Criminal Court and the United Nations, which state that the costs of such referrals must be borne by the United Nations.

The fight against impunity is an objective shared by the States parties to the Rome Statute and the United Nations, but that objective must be accompanied by a commitment to providing the Court with the resources necessary to fulfil its functions. Lack of action in that regard could jeopardize the sustainability of the Court's investigations and damage the Organization's credibility. We also believe that there is scope for a closer and better relationship between the Court and the Security Council, especially with regard to the work of its subsidiary bodies, such as the Sanctions Committees and the Working Group on Children and Armed Conflict.

In conclusion, Argentina wants to emphasize the International Criminal Court's contribution to the objectives of this Organization in its fight against impunity for the most serious crimes of international concern. Indeed, the Court's contribution to the configuration of a multilateral system that aims to promote respect for human rights and achieve a lasting peace, in accordance with international law and the purposes and principles of the Charter of the United Nations, is unquestionable.

The suffering of the victims of the most atrocious crimes is humankind's greatest shame. We cannot allow this century to pass without providing concrete responses to those violations. That will enable us to work together to build a more just world under the primacy of international law.

Mr. Islam (Bangladesh): Bangladesh thanks the President of the International Criminal Court (ICC) for his comprehensive report with its valuable insights (see A/73/334). We commend his observations concerning the standing of the ICC vis-à-vis national sovereignty, a relationship worthy of the attention of all Member States.

Bangladesh is pleased once again to be a sponsor of draft resolution A/73/L.8, entitled "Report of the International Criminal Court". We have taken due note of the updates on the judicial and prosecutorial activities of the Court, as well as on the status of preliminary examinations.

During the reporting period, we followed the ruling by the Pre-trial Chamber of the ICC on the issue of the forced deportation of the Rohingya population from Myanmar's Rakhine state to Bangladesh with particular interest, in our capacity as a State party to the Rome Statute. We acknowledge the sua moto initiative by the Office of the Prosecutor to seek the Pre-trial Chamber's ruling in that regard, especially at a time when the Court itself faces challenges on multiple fronts. Bangladesh considered it a solemn responsibility as a State party to respond to the letter sent by the Pre-trial Chamber within the set deadline. Against the backdrop of our bilateral efforts with Myanmar to ensure the safe, dignified and sustainable return of the Rohingya people to Rakhine state, we consider the Pre-trial Chamber's

ruling concerning the possible denial of their right to return to be an important development.

Bangladesh will continue to cooperate with the Court in the wake of the Pre-trial Chamber's ruling, while we want to underscore the need for ensuring accountability for the entire spectrum of atrocity crimes committed against the Rohingya by the Myanmar security forces and the non-State actors concerned. In that context, we recall the responsibility of the Security Council in the face of the authoritative evidence of the gravest crimes under international law committed against the Rohingya, which has been furnished by the United Nations Independent International Fact-finding Mission on Myanmar. We acknowledge the Human Rights Council's decision to act on the Fact-finding Mission's report (A/HRC/39/64) and to establish an ongoing independent mechanism to collate, analyse and preserve evidence for facilitating the prosecution of crimes through the appropriate national or international judicial mechanisms. It is crucial to the restoration of confidence among the forcibly displaced Rohingya with regard to the prospects for their voluntary return that the atrocity crimes that they have been subjected to are duly accounted for and the perpetrators brought to justice.

Bangladesh welcomes the decision by the Assembly of State Parties to activate the Court's jurisdiction over the crime of aggression as of 17 July. We also support the three amendments to article 8 of the Rome Statute and take note of further proposals brought before the Working Group on Amendments.

We stress that the cooperation, assistance and support of State parties to the Rome Statute, as well as other States, remain critical to ensuring that the mandate of the ICC is discharged in a sustained and meaningful manner. We reiterate the importance of recognizing the Court's mandate and competence throughout the United Nations system with a view to acknowledging its valuable contribution to international peace and security, the rule of law and the creation of peaceful, just and inclusive societies. We take positive note of the collaboration pursued between UNESCO and the Office of the Prosecutor to protect cultural heritage from attack during armed conflicts.

We underscore the need for the Security Council's continued support for the effective functioning of the Court, including in the cases referred to it by the Council. There is clear merit in the suggestion for a structured dialogue between the Council and the Court on issues of mutual interest, notably in relation to States' non-cooperation, sanctions, travel bans and asset freezes. For our part, we shall continue to extend all necessary cooperation to the Court in mission areas where our peacekeepers and military observers are deployed.

Bangladesh reaffirms the primary responsibility of national jurisdictions to investigate and prosecute the crimes defined in the Rome Statute. We fully endorse the recommendation for the possible inclusion of issues related to the Rome Statute in legal and judicial reform programmes supported by the United Nations in the context of development assistance for the rule of law. That would be particularly crucial for States that are not party to the Rome Statute.

As a State party, Bangladesh remains committed to promoting the universality and full implementation of the Rome Statute. We would hope that the twentieth anniversary of the adoption of the Rome Statute, which was observed last year, will help create the necessary impetus for the eventual universalization of the Statute. ICC cooperation seminars and other cooperation arrangements with relevant international and regional organizations should also contribute to the universalization agenda.

Bangladesh underscores the need for appropriate capacity-building support for the national jurisdictions of States parties, pursuant to the principle of complementarity. In that context, we reiterate the importance of considering budgetary support for internships and visiting professional programmes for applicants from States parties representing the developing and least-developed countries. We have circulated a working paper on that subject for favourable consideration by all States parties and the Court. We reiterate that due attention must be given to ensuring the equitable geographical representation of the staff at the Court, especially at the professional level.

We consider it important to enhance voluntary contributions to the Trust Fund for Victims so that the Court can deliver on its reparations and assistance mandates. As the designated facilitator, Bangladesh is making efforts to engage with the States parties concerned to settle their outstanding arrears. We also look forward to discharging our responsibilities as a member of the ICC Bureau during the next two-year period.

In conclusion, we want to emphasize the importance of upholding solidarity among States parties, as well as the integrity and credibility of the ICC as a court of last resort, in the overarching interest of fighting impunity for the gravest crimes under international law that are under its jurisdiction.

Ms. Roopnarine (Trinidad and Tobago): Trinidad and Tobago is grateful to the Secretary-General for the annual report of the International Criminal Court (ICC) contained in document A/73/334 and supporting documents on the activities of the Court in 2017 and 2018. We view those documents as important instruments that convey essential information on the activities of the Court to the wider membership of the United Nations as well as States parties. We also want to take this opportunity to congratulate the President of the ICC, Judge Chile Eboe-Osuji, on his presentation of the report.

Trinidad and Tobago was a participant in the trenches during the genesis of the Rome Statute, through the work of our late former Prime Minister and subsequent President of the Republic of Trinidad and Tobago. We are therefore pleased to join others in celebrating the twentieth anniversary of the founding document of the ICC. The praise of the international community is well placed and well merited.

We submit that the ICC is both an international guardian and guarantor of the rule of law. Indeed, Trinidad and Tobago's unwavering commitment to the ICC is informed by its recognition of the importance of ending impunity for perpetrators of the most serious crimes of concern to the international community as outlined in article 5 of the Rome Statute, that is, the crime of genocide, crimes against humanity, war crimes and crimes of aggression.

We welcome the activation of the Court's jurisdiction over the crime of aggression as of 17 July. Trinidad and Tobago ratified the amendments concerning the crime of aggression in November 2012, following the Review Conference of the Rome Statute in Kampala in 2010. We view that development as a means to ensure that the Court is able to exercise wider jurisdiction, including over crimes of aggression, thereby preventing impunity.

Notwithstanding the many challenges facing the Court, it cannot be denied that the ICC continues to be a beacon of hope to the victims of grave crimes within its jurisdiction who are seeking justice. They include the most vulnerable, such as thousands of women and children, who are often the ones most affected by the actions of criminals who show blatant disregard for the sanctity of human life by violating international humanitarian and human rights law.

We nonetheless remain deeply concerned about the recent withdrawals and notifications of withdrawal from the Rome Statute, as highlighted in the current report. While respecting the sovereign right of States to act as they deem appropriate, Trinidad and Tobago is of the view that engagement, not disengagement, should be the prevailing approach to the ICC.

We recognize that the ICC has been perceived by some as a threat to national sovereignty. However, we want to demystify that notion and remind Member States that consistent with the principle of complementarity as enshrined in the Rome Statute, the Court's jurisdiction is invoked only when States are unable or unwilling to prosecute those alleged to have committed grave crimes. No individual or State need fear the ICC, therefore, as it is a court of last resort.

Trinidad and Tobago reaffirms that the success of the Court is fundamentally linked to the universality of the Rome Statute. To that end, we reiterate our commitment to promoting the universality of the Rome Statute, and we urge all States that have not yet done so to ratify and fully implement it.

Pursuant to the provisions of the Relationship Agreement, which provides for close cooperation between the Court and the United Nations in discharging their respective responsibilities, we are satisfied that during the current reporting period, the United Nations cooperated extensively with the Court with a view to further strengthening the relationship and ensuring the effective implementation of the Agreement. In accordance with the report of the Secretary-General on this item, we would like to recall that the capacity of the Security Council to refer a situation to the Court is crucial to our efforts to promote accountability, but active follow-up on referrals, ensuring that there will be cooperation, is necessary in order to ensure that justice is delivered. We therefore welcome the dialogue on 6 July between the States parties to the Court that are members of the Council through the convening of an Arria Formula meeting, the first of that nature.

Finally, Trinidad and Tobago commends the efforts of the Court to ensure that justice can prevail and that criminals are not allowed to continue their actions with impunity. We remain satisfied with the steadfast

Annex 78

UNGA, Third Committee, *Official Records*, Seventy-third session, Summary record of the 50th meeting (16 November 2018), UN doc. A/C.3/73/SR.50 [extract]

Available at:

http://undocs.org/A/C.3/73/SR.50

French version available at:

http://undocs.org/fr/A/C.3/73/SR.50

United Nations A/C.3/73/SR.50

General Assembly
Seventy-third session
Official Records

Distr.: General
16 January 2019
Original: English

Third Committee

Summary record of the 50th meeting
Held at Headquarters, New York, on Friday, 16 November 2018, at 10 a.m.

Chair: Mr. Saikal (Afghanistan)

Contents

18-19624 (E)

entitlement, compensation, protection from violence and reprisals and the dispensation of justice. On the one hand, United Nations agencies must be allowed access to the country to ascertain whether the environment was propitious, on the other hand, Myanmar must make further demonstrable efforts to respond to the Rohingya's demands. Nevertheless, instead of supporting the draft resolution at the current meeting, the delegation of Myanmar had repeated a fictional narrative about the recent repatriation process. Bangladesh would gain nothing from holding the Rohingya back or forcing them to return. All parties should therefore refrain from using any such narrative or from condescending to tell Bangladesh what to do. Being a responsible State, Bangladesh would continue to adhere to the established norms of international humanitarian law and international human rights law. He urged all Member States to support the draft resolution in the spirit of responsibility-sharing.

62. **Ms. Simpson** (United States of America) said that her delegation was deeply concerned by widespread reports of human rights abuses in Burma, including in Kachin, Rakhine and Shan States. Although the commitment of the Government of Myanmar to implement the recommendations of the Advisory Commission on Rakhine State and its signing of a memorandum of understanding with UNDP and UNHCR represented progress, commitments were not enough without action. She called on the authorities to establish civilian control of the military; ensure accountability for those responsible for human rights violations and remove them from positions of authority and future public office; provide unhindered access to the United Nations, humanitarian organizations, human rights investigators and media professionals; fully implement the Advisory Commission's remaining recommendations, including with regard to access to citizenship and freedom of movement; and ensure that all displaced persons could voluntarily return to their places of origin, safely and with dignity.

63. The documentation of human rights abuses in reports by the fact-finding mission should spur the international community to act. The United States welcomed all efforts to promote accountability in Myanmar, especially the establishment of an ongoing independent mechanism to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011 and the appeal for its expeditious entry into operation. Her delegation interpreted the reference in the twenty-second preambular paragraph of the draft resolution to the prosecution of those responsible for violations of international law to pertain only to actions that constituted criminal violations under applicable law, while the effective remedies referred to in the same paragraph should be provided only to persons whose rights had been violated under applicable international treaties. Consequently, the draft resolution did not change the current state of conventional or customary international law and did not bind States to obligations under international instruments to which they were not party.

64. The United States called upon the authorities to cooperate fully with all relevant mandates and strongly disapproved of the Government's decision in December 2017 to rescind cooperation with the Special Rapporteur on the situation of human rights in Myanmar. The deterioration of respect for fundamental freedoms was also a cause for concern. In that light, she called for the immediate and unconditional release of Reuters reporters, Wa Lone and Kyaw Soe Oo, who had been imprisoned for reporting on extrajudicial killings of Rohingya villagers. She thanked the Government of Bangladesh for remaining generous hosts to over 1 million Rohingya and welcomed a recent declaration to suspend their immediate repatriation. All parties should work with United Nations agencies to promote the well-being of refugees and repatriate them only if their return was voluntary, dignified, safe, sustainable and in line with the principle of non-refoulement.

65. **Mr. Suan** (Myanmar), speaking on a point of order, said that the representative of the United States should show more respect to Myanmar as a sovereign State by referring to it by its official name.

66. **Ms. Velichko** (Belarus) said that her delegation would vote against the draft resolution. The current topic exemplified the way in which country-specific agenda items undermined trust between stakeholders and increased confrontation. While sharing the concern of OIC member States with regard to the Rohingya refugee crisis, Belarus could not support the use of country-specific resolutions to resolve such issues and viewed the Third Committee as an ineffective platform for improving the situation of the Muslim Rohingyas. Since the draft resolution had always been a way of exerting political pressure on Myanmar, the agenda item was ineffective and did not inspire trust; thus her delegation had asked to remove it from the Committee's agenda. The crisis in Myanmar would be resolved only through dialogue and cooperation, not through external pressure or threats. Belarus therefore welcomed the recent agreement between Bangladesh and Myanmar and the three-phase plan for the Rohingya issue proposed by China.

of cohesion and synergy in their work, which raised questions about the proper use of the limited resources of the United Nations. Efforts should focus on the means to expedite the extension of humanitarian assistance to the Rohingya Muslim minority and ensure their voluntary return to their homes. The Government of Myanmar should adopt the necessary measures to provide protection to the Rohingya and redress to the victims and their families, and to end impunity.

86. **Mr. Habib** (Indonesia) said that, during discussions on the draft resolution, his delegation had consistently held the view that the draft resolution should assist Myanmar in the creation of an environment in Rakhine State in which freedom of movement was respected, discrimination was uprooted and development was inclusive. The draft resolution should also help to address the issue of voluntary, safe and dignified repatriations. The success of Myanmar was vital for peace and security in the region and its crisis should not be allowed to lead to a further disaster. ASEAN, as the region's principal organization, should become part of the solution through meaningful involvement. Indonesia stood ready to work with the Government of Myanmar in solving the immeasurable challenges it faced through bilateral, ASEAN and United Nations mechanisms.

87. **Mr. Sparber** (Liechtenstein), also speaking on behalf of Iceland, said that its longstanding concern about the situation in Myanmar had found its tragic and full-scale expression in the report of the independent international fact-finding mission. Consistent patterns of serious human rights violations and abuses in Kachin, Rakhine and Shan States, in addition to serious violations of international humanitarian law, rape and other forms of sexual violence, had been perpetrated on a massive scale and were the result of what appeared to be a policy by the authorities. His delegation welcomed the inclusion of those findings in the draft resolution and the reference made to Human Rights Council resolution 39/2 and its landmark decision to establish an independent mechanism to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law and to prepare files in order to facilitate and expedite criminal proceedings. It was a much-needed step to ensure accountability for the heinous crimes committed in Myanmar.

88. However, it was regrettable that the draft resolution omitted key developments and decisions of the Human Rights Council in the fight against impunity. The draft resolution failed to acknowledge the ruling of the Pre-Trial Chamber of the International Criminal Court that the International Criminal Court could exercise jurisdiction over the forced deportation of the Rohingya people from Myanmar to Bangladesh, and the request to the ongoing independent mechanism to cooperate closely with any of its future investigations pertaining to human rights violations in Myanmar. It also failed to recall the authority of the Security Council to refer the situation in Myanmar to the International Criminal Court, which was mentioned in the Human Rights Council resolution.

89. His delegation's calls to accurately reflect those developments, in line with Human Rights Council resolution 39/2, had not been acted upon. With those omissions, the Third Committee unfortunately failed to acknowledge relevant efforts and achievements in addressing the human right situation in Myanmar and deviated from the important work of the Human Rights Council. Recent reports that returns of Rohingya refugees to Myanmar might be forced, which would be inconsistent with international law, including the principle of non-refoulement, were a cause for concern. Returns must be voluntary, safe, dignified and sustainable, and uphold the human rights of refugees.

90. **Ms. Boucher** (Canada) said that the draft resolution sent a strong signal that the gross human rights violations and abuses committed against the Rohingya and other minorities in Myanmar should not go unpunished. The international community had a moral imperative to stand up for those without a voice and a responsibility to ensure justice for persecuted minorities around the world, including the Rohingya. Canada remained deeply concerned by reports that the repatriation of thousands of Rohingya refugees was set to begin imminently, despite non-existent conditions for return. Repatriation must be voluntary, safe, dignified and sustainable and must not be rushed. Her delegation urged the Government of Myanmar to demonstrate real progress in the implementation of the recommendations of the Advisory Commission on Rakhine State and guarantee the protection of returning refugees. Ensuring safe freedom of movement, equal rights, opportunities for livelihood, access to essential services and access to citizenship for all Rohingya was essential.

91. Her delegation called on the Government of Myanmar to grant full and unimpeded access for the United Nations and other international organizations to monitor, assess and facilitate future repatriation efforts and reiterated the importance of informed consent for any return to take place. The draft resolution was an integral part of the continuing efforts by the international community to end impunity in Myanmar and to bring the perpetrators of the genocide to account. In that context, her Government welcomed the establishment without delay of an ongoing and

independent mechanism to collect and preserve evidence of international crimes committed in Myanmar and reiterated its call for the Security Council to refer the situation in Myanmar to the International Criminal Court. Without justice, equality and respect for fundamental rights in Myanmar, there could be no lasting peace and reconciliation. It was necessary to continue to address the acute needs of the Rohingya, the host communities in Bangladesh and other vulnerable and conflict-affected populations in Myanmar. Her Government commended Bangladesh for its generosity.

92. **Mr. Suan** (Myanmar) said that his delegation would like to thank those delegations that had expressed their principled position of opposing country-specific resolutions by voting against the draft resolution, abstaining or not taking part in the vote for demonstrating their courage to resist the attempt of major groups in the United Nations system to dictate their political agenda to small developing Member States. Such attempts went against multilateralism and the principles and purposes of the Charter of the United Nations and were a major concern for small States. Given the many resolutions adopted and sessions held on the situation in Myanmar over the years, it was clear that the United Nations was spending a significant amount of its scarce resources on excessive duplication and overlapping mechanisms targeted on a single developing country in democratic transition to the detriment of other crises such as the one affecting Yemen.

93. The adoption of yet another ill-intentioned, selective and politically motivated resolution would not help the efforts of his Government to solve the situation in Rakhine State, but would lead to further polarization and escalation of tensions among religious communities in the country and aggravate mistrust between the people of Myanmar and the international community. The United Nations must promote and advocate for peace, harmony and reconciliation, not hatred, mistrust or polarization. The people of Myanmar were united under the leadership of its State Counsellor in their relentless efforts to build peace and ensure the rule of law, national reconciliation and development. Myanmar was determined to achieve democracy with the support and good will of its friends.

Agenda item 28: Social development (*continued*)

(a) Implementation of the outcome of the World Summit for Social Development and of the twenty-fourth special session of the General Assembly (*continued*) (A/C.3/73/L.17/Rev.1)

Draft resolution A/C.3/73/L.17/Rev.1: Implementation of the outcome of the World Summit for Social Development and of the twenty-fourth special session of the General Assembly

94. **The Chair** said that the draft resolution had no programme budget implications.

95. **Ms. Abdelkawy** (Egypt), introducing the draft resolution on behalf of the Group of 77 and China, said that the action-oriented text examined policies, strategies and innovative approaches to address different forms of inequalities with a view to implementing the objectives of the World Summit for Social Development and the 2030 Agenda for Sustainable Development. The draft resolution addressed the particular needs of Africa and least developed countries and highlighted the situation and specific needs of young people, older persons, persons with disabilities, families and indigenous peoples. The draft resolution continued to lend its full support to the work of the Commission for Social Development as the main United Nations forum for global dialogue on social development issues and reaffirmed that the Commission would contribute to the follow-up to the 2030 Agenda for Sustainable Development. The draft resolution gave priority to youth employment and women's economic empowerment as important pillars of social development towards the implementation of the 2030 Agenda for Sustainable Development.

96. **Mr. Khane** (Secretary of the Committee) said that Austria, Belgium, Denmark, Estonia, France, Italy, Luxembourg, Malta, Montenegro, the Netherlands, Portugal, Romania, Serbia, Slovenia, Spain and the former Yugoslav Republic of Macedonia had become sponsors of the draft resolution.

97. **Ms. Simpson** (United States of America), speaking in explanation of vote before the voting, said that her delegation was disappointed by the inclusion of issues that had no clear link to social development or the work of the Third Committee, as the consideration of unrelated issues was a misuse of resources. The United States expressed concerns about the vague and sweeping references to some trade practices and barriers and their supposed negative impact on economic and social development. Furthermore, the draft resolution inappropriately called upon international financial institutions and other non-United Nations organizations

Annex 79

UNSC, 8477th meeting (28 February 2019), UN doc. S/PV.8477 [extract]

Available at:

http://undocs.org/S/PV.8477

French version available at:

http://undocs.org/fr/S/PV.8477

United Nations S/PV.8477

Security Council

Seventy-fourth year

Provisional

8477th meeting

Thursday, 28 February 2019, 4.30 p.m.

New York

President:	Mr. Ndong Mba	(Equatorial Guinea)
Members:	Belgium	Mr. Pecsteen de Buytswerve
	China	Mr. Wu Haitao
	Côte d'Ivoire	Mr. Ipo
	Dominican Republic	Mr. Singer Weisinger
	France	Mr. Delattre
	Germany	Mr. Heusgen
	Indonesia	Mr. Djani
	Kuwait	Mr. Alotaibi
	Peru	Mr. Duclos
	Poland	Ms. Wronecka
	Russian Federation	Mr. Polyanskiy
	South Africa	Mr. Van Shalkwyk
	United Kingdom of Great Britain and Northern Ireland	Ms.Pierce
	United States of America	Mr. Cohen

Agenda

The situation in Myanmar

19-05868 (E)

In conclusion, I would like to express to you, Mr. President, and your team, our most heartfelt thanks and congratulations on your excellent presidency throughout the month of February.

Mr. Singer Weisinger (Dominican Republic) (*spoke in Spanish*): Since this is the last public meeting of your country's presidency of the Security Council, Sir, my delegation wishes to thank your delegation. It was an honour to have your Foreign Minister participate throughout the month. The debates that you organized had a great impact. I truly congratulate you. It was the second Council presidency in 2019 that was led in Spanish. As a result, many ambassadors have now learned the language.

We would first like to thank Ms. Christine Schraner Burgener for her detailed briefing on the situation in Myanmar and the latest developments on the ground.

The Rohingya crisis continues to affect nearly 1 million refugees in Bangladesh and the remaining Muslim Rohingyas in Rakhine state, who suffer from segregation and limited access to essential services. Ethnic conflicts are on the rise, the peace process is on the verge of collapse and insecurity has intensified, creating opportunities for armed groups to engage in illicit drug production and human trafficking. This human catastrophe on both sides of the border represents a threat to international peace and security and has generated numerous situations that require the immediate attention of the international community.

In that regard, the Dominican Republic reiterates its strong condemnation of the serious human rights violations and horrendous crimes that have affected the Rohingya community in Myanmar and recognizes the Council's responsibility to address the crisis and respond appropriately to it. The Council to date has addressed this issue on several occasions and in different formats. However, there are no clear indications of a sustainable and lasting solution that would allow the Rohingyas a dignified, secure and voluntary return to their territories.

According to published data, the current displaced and refugee population totals nearly 1 million people. The displacement has been generated by what is described as ethnic cleansing, genocide and atrocity crimes. Such strong and regrettable descriptions require action commensurate with their severity. The Security Council seems paralysed and inert, but the time has come for us to mobilize and act to prevent further atrocities, protect vulnerable populations and ensure that perpetrators are held accountable for their actions. However, collective responsibility begins with individual responsibility.

It is also time for the Government of Myanmar to assume its responsibility to protect its citizens on its territory. We urgently call upon the Government to implement the recommendations of the Advisory Commission on Rakhine State, which include, among other issues, the implementation of strategies for socioeconomic development, citizenship, freedom of movement, community participation and representation, intercommunal cohesion and the security of all communities.

It is also essential to fully comply with the memorandum of understanding, which will allow Rohingya communities a dignified and sustainable return that adheres to human rights standards and will ensure unrestricted access of humanitarian assistance to all displaced people. That will enable us to effectively mitigate the impact of this regrettable human and humanitarian crisis. The responsibility to ensure the dignified return of refugees lies with the Government of Myanmar, which must create the necessary conditions for the return of refugees with the cooperation of the international community, particularly United Nations agencies. We must remember that a solution is possible and that we must prevent a repetition of the failures of the past. Human rights and humanitarian principles cannot be applied selectively, watered down or disregarded.

I would now like to refer to another aspect of this crisis — the attribution of responsibilities for perpetrators of atrocities committed against the Rohingya population. There has been no type of investigation to date or access allowed for fact-finding. Access for the Special Rapporteur has been rescinded and journalists have been arrested for investigating and verifying crimes committed. In short, there has been no process of accountability.

Above all, we are concerned about the victims of gender-based violence, the degrading and cruel acts of sexual assault that have been committed against women and girls. Those levels of brutality and violence indicate a clear trend of using those crimes as a strategy to intimidate and punish the civil population. We urgently call for the launching of relevant investigations to identify those responsible for those horrendous acts,

Annex 80

UN, Office of the High Commissioner for Human Rights, Oral Update to 41st Session of the Human Rights Council by the Special Rapporteur on the situation of human rights in Myanmar [10 July 2019]

https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24782&LangID=E

Oral Update to 41st Session of the Human Rights Council by the Special Rapporteur on the situation of human rights in Myanmar

Mr President, distinguished delegates, ladies and gentlemen,

Thank you for the opportunity to update you on the situation of human rights in Myanmar.

I welcome the recent announcement by the Government that the "Other Accounts" of the extractive industry State-owned economic enterprises will be abolished and all their income will be transferred to the Union Government. I call on the Government to ensure that this is a reform that translates into better respect for human rights. This is an opportunity for the Government to improve transparency in the sector and to ensure that departments tasked with enforcing environmental and social safeguards are properly resourced.

Mr President,

Unfortunately, despite this positive development, the situation continues to deteriorate in several areas. In May, police officers using rubber bullets and tear gas to disperse villagers staging a sit-in protest outside the coal powered Alpha Cement Factory in Mandalay Region injured many people. The villagers were protesting the serious harm the factory's expansion may cause to the environment, health and livelihoods as a result of pollution, and fears it will lead to land seizures. Shockingly, a villager who was arrested later died in police custody despite being in good health before his arrest. Ko Nanda, a reporter who was covering the protests, was also arrested and remains unjustly detained in Ohboe prison facing multiple criminal charges.

Villagers living near the coal-powered Tigyit power plant in Taunggyi, Shan State have been suffering severe health problems and are demanding the power plant's operations be stopped and compensation provided. Independent scientific testing and expert analysis found that the air and water surrounding the power plant contains pollutants and concentrations of toxic heavy metals at levels which greatly exceed the national guidelines. Hair samples taken from children living in the area contained elevated levels of highly toxic elements including arsenic, cadmium and mercury.

The mud slide in Hpakant that killed 54 jade miners in April is a stark reminder of the urgent need for enforcement of environmental regulations. Accidents of this kind occur regularly, and this predictable tragedy could and should have been avoided. The legal framework for jade mining is not effective and was worsened by the new Gemstone Law. While plans for environmental management reforms have stalled, thousands of lives have been destroyed over many years by the devastating impact of the jade mining in Hpakant. I urge the Government to consider declaring an environmental emergency in Hpakant and to halt all mining indefinitely until a proper regulatory framework that meets international standards can be adopted and enforced; not just a three-month moratorium during the rainy season.

It is the duty of the Government and the responsibility of companies to ensure that environmental safeguards are adequate, implemented and complied with to protect people. Local communities must be empowered with access to proper grievance mechanisms and have their concerns addressed comprehensively, not face deception or reprisals for speaking out.

Friends and colleagues,

Muslims across the country continue to be subjected to harassment and intimidation led by ultra-nationalist groups. Extremist monk Wirathu has been charged with sedition regarding his alleged disrespect of the State Counsellor. That he faces imprisonment for this and not for inciting violence against Myanmar's Muslim communities is deeply troubling. Local administrators have prevented mosques from opening in Sagaing and allowed armed mobs to force Muslim prayer sites to close in Yangon, despite contrary directives from Regional Governments. I am wearing a white rose today to express my support for the White Rose Campaign, initiated by a Buddhist monk who handed flowers to Muslim worshippers, and spread across the country to mark the end of Ramadan.

Freedom of expression continues to be stifled through draconian laws used to suppress criticism of the Tatmadaw. Film director and human rights activist Min Htin Ko Ko Gyi has been arrested and detained since April for allegedly criticising the military. I am deeply concerned for his health as he is seriously ill with liver cancer. Seven members of the Peacock Generation Thangyat troupe are being held in Insein prison following a performance that satirised the Tatmadaw. Ye Ni, editor of the Irrawaddy, is facing trial and Aung Marm Oo, editor of the Development Media Group based in Rakhine has been forced into hiding after criminal complaints were filed against him. Both cases relate to reporting on the conflict in Rakhine State. Charges should be dropped in all these cases.

I repeat my call for the Government to take urgent and decisive action on reforming repressive laws and the judiciary. Prosecutors must be empowered to withdraw cases where there would be a miscarriage of justice in order to uphold the rule of law.

Distinguished delegates,

The Tatmadaw has extended its unilateral ceasefire in the north and east of Myanmar to 31 August, and the Shan State Progressive Party and Ta'ang National Liberation Army, who had been engaging in serious hostilities since late 2018, announced a bilateral ceasefire in May. These developments are welcome, but are not enough to bring about lasting peace that leads to security and stability in

welcome, but are not enough to bring about lasting peace that leads to security and stability in northern Myanmar, such that over 100,000 people who have been displaced now for eight years feel safe to return home.

I have not observed any progress in the peace process and I am disturbed that the Tatmadaw continues to exclude the Arakan Army from meaningful involvement in negotiations. As I have said before, an open, inclusive and participatory process is one that will bring about long-lasting sustainable peace in Myanmar. I am also seriously concerned by reports that the Tatmadaw requested Thai authorities to stop a meeting of ethnic armed organisations scheduled in Thailand, and I note this is not the first time this has occurred.

Mr. President,

The conflict with the Arakan Army in northern Rakhine State and parts of southern Chin State has continued over the past few months and the impact on civilians is devastating. Many acts of the Tatmadaw and the Arakan Army violate international humanitarian law and may amount to war crimes, as well as violating human rights. I again call on all parties to uphold international humanitarian law and respect human rights.

More than 35,000 people are now estimated to have been displaced by the conflict in the last six months. At least 95,000 people are without access to basic and essential services due to movement restrictions on civilians and the Government's continuing blockage of aid organisations.

Indiscriminate attacks in and around villages as well as targeting of civilians and civilian objects has left scores of civilians wounded and dead. This includes children like ten-year-old Athein Chae and eight-year-old Husson Shofi from Kyauktaw township, killed in separate incidents in May. There have been reports of the Tatmadaw using forced labour. The Arakan Army has reportedly abducted and detained civilians, including 12 construction workers in Paletwa, and I am concerned about their situation.

There are deeply disturbing reports of civilians, mostly ethnic Rakhine men, being disappeared, or detained and interrogated by the Tatmadaw on suspicion of association with the Arakan Army. Several of them have died while in the Tatmadaw's custody.

In an alarming event in April, a military helicopter opened fire on a group of Rohingya men and boys who were collecting bamboo in Buthidaung township. The helicopter reportedly circled the group several times, firing as the men and boys were fleeing, killing six and injuring thirteen.

Just last week, the Government ordered a mobile internet shutdown in the region for security reasons while more troops were reportedly deployed. The information blackout is imperilling villagers, further obstructing the humanitarian response and shielding the military operations from scrutiny. There has already been a reported rise in custodial deaths since the shutdown. Moreover, without internet services, families relying on remittances sent by relatives are facing further hardship.

We are witness to an ongoing tragedy in Rakhine State, where less than two years ago horrific atrocities were inflicted on the Rohingya, and the civilian population is once again being subjected to grievous human rights violations by security forces. Troops under the control of the Western Command are active again and Light Infantry Divisions from other parts of the country have been deployed to the region. So long as impunity for alleged crimes prevails, we will continue to bear witness to flagrant violations of rights perpetrated against ethnic minority populations in the name of counterinsurgency, entrenching grievances and prolonging insecurity and instability.

Ladies and gentlemen,

I am concerned that the international community is beginning to overlook the situation of over a million Rohingya refugees in Cox's Bazar. They are subject to a human rights crisis, responsibility for which lies with Myanmar. It is entirely their responsibility to bring about all necessary conditions for all the people they forcibly drove out to return and they are entirely failing to do so. The remaining Rohingya in Myanmar continue to be denied their rights and are persecuted by authorities, making returns from Bangladesh impossible at this time. However, conversations I have had with many refugees reveal they wish to return to Myanmar, but only when they know that they will be safe; they will have citizenship and equal rights with the rest of the population of Myanmar; and they will have their property returned to them.

Mr President,

It is clear to me that accountability cannot be achieved in the domestic arena. This comes as the military announced in March that it had established an "investigative court" to respond to allegations made by the UN and non-government organisations. Its function and how it will work in parallel to the Independent Commission of Enquiry are not apparent. I remain highly concerned about the Commission, which announced in May that its staff had finally undertaken training on international standards for evidence collection and international criminal justice nearly a year after it was established and shortly before it is due to submit its report to the President. This further demonstrates it does not have the capacity to bring justice to victims or be a credible form of accountability.

I reiterate what I have now said many times, that the international community must ensure justice is brought about. I am disappointed that nine months following the resolution establishing it, the Independent Investigative Mechanism for Myanmar is still not functioning. While the expectation has always been that the Mechanism will succeed the work of the Fact Finding Mission, due to the slow pace of its operationalisation, there is a real risk that there will be a gap in investigations into the most serious international crimes and violations of international law in Myanmar. Member States must

serious international crimes and violations of international law in Myanmar. Member States must remain engaged and I urge them to stress to all relevant UN offices that the Mechanism needs to be expeditiously staffed and resourced so that it can begin to fulfil its mandate by the Council's next session. Otherwise, there will only be further delay in the justice owed to the people of Myanmar.

I welcome the decision by the Organisation of Islamic Cooperation to pursue a case at the International Court of Justice under the Genocide Convention. While this course of action alone will not in itself bring comprehensive accountability, it is appropriate to consider the responsibility of the State itself in violating international law and to pursue all avenues to seek remedies for victims.

I repeat the call I made in the Council's previous session that the situation of Myanmar must be referred to the International Criminal Court, and that alternatively the international community establish an independent tribunal in which perpetrators of international crimes may be tried. It is incumbent on the Security Council to find a way to put differences aside and unite in relation to Myanmar by coming out with a strong resolution.

With the situation not improving, and serious violations taking place on a regular basis, I implore Member States to demonstrate their commitment to human rights in Myanmar.

By now, we have all read the report of Mr Rosenthal, who found that there was a systemic failure of the United Nations in Myanmar. This is not new information. I raised issues regarding the United Nations' conduct and called for a full independent review in consecutive reports. In his assessment, the United Nations failure also included failure by Member States. I will close by posing a question to all Member States: are you going to continue to fail to protect all the people of Myanmar?

Annex 81

ILC, Draft articles on Prevention and Punishment of Crimes Against Humanity, *Yearbook of the International Law Commission*, 2019, vol. II, Part Two [extract]

Available at:

https://legal.un.org/ilc/texts/instruments/english/draft_articles/7_7_2019.pdf

French version available at:

https://legal.un.org/ilc/texts/instruments/french/draft_articles/7_7_2019.pdf

Annex 81

Draft articles on Prevention and Punishment of Crimes Against Humanity

2019

Adopted by the International Law Commission at its seventy-first session, in 2019, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/74/10). The report will appear in *Yearbook of the International Law Commission, 2019*, vol. II, Part Two.

(b) taking evidence or statements from persons, including by video conference;

(c) effecting service of judicial documents;

(d) executing searches and seizures;

(e) examining objects and sites, including obtaining forensic evidence;

(f) providing information, evidentiary items and expert evaluations;

(g) providing originals or certified copies of relevant documents and records;

(h) identifying, tracing or freezing proceeds of crime, property, instrumentalities or other things for evidentiary or other purposes;

(i) facilitating the voluntary appearance of persons in the requesting State; or

(j) any other type of assistance that is not contrary to the national law of the requested State.

4. States shall not decline to render mutual legal assistance pursuant to this draft article on the ground of bank secrecy.

5. States shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to, or enhance the provisions of this draft article.

6. Without prejudice to its national law, the competent authorities of a State may, without prior request, transmit information relating to crimes against humanity to a competent authority in another State where they believe that such information could assist the authority in undertaking or successfully concluding investigations, prosecutions and judicial proceedings or could result in a request formulated by the latter State pursuant to the present draft articles.

7. The provisions of this draft article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance between the States in question.

8. The draft annex to the present draft articles shall apply to requests made pursuant to this draft article if the States in question are not bound by a treaty of mutual legal assistance. If those States are bound by such a treaty, the corresponding provisions of that treaty shall apply, unless the States agree to apply the provisions of the draft annex in lieu thereof. States are encouraged to apply the draft annex if it facilitates cooperation.

9. States shall consider, as appropriate, entering into agreements or arrangements with international mechanisms that are established by the United Nations or by other international organizations and that have a mandate to collect evidence with respect to crimes against humanity.

Article 15
Settlement of disputes

1. States shall endeavour to settle disputes concerning the interpretation or application of the present draft articles through negotiations.

2. Any dispute between two or more States concerning the interpretation or application of the present draft articles that is not settled through negotiation shall, at the request of one of those States, be submitted to the International Court of Justice, unless those States agree to submit the dispute to arbitration.

3. Each State may declare that it does not consider itself bound by paragraph 2 of this draft article. The other States shall not be bound by paragraph 2 of this draft article with respect to any State that has made such a declaration.

4. Any State that has made a declaration in accordance with paragraph 3 of this draft article may at any time withdraw that declaration.

Annex

1. This draft annex applies in accordance with draft article 14, paragraph 8.

Designation of a central authority

2. Each State shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified by each State of the central authority designated for this purpose. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States. This requirement shall be without prejudice to the right of a State to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States agree, through the International Criminal Police Organization, if possible.

Procedures for making a request

3. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State, under conditions allowing that State to establish authenticity. The Secretary-General of the United Nations shall be notified by each State of the language or languages acceptable to that State. In urgent circumstances and where agreed by the States, requests may be made orally, but shall be confirmed in writing forthwith.

4. A request for mutual legal assistance shall contain:

(a) the identity of the authority making the request;

(b) the subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) a summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) a description of the assistance sought and details of any particular procedure that the requesting State wishes to be followed;

(e) where possible, the identity, location and nationality of any person concerned; and

(f) the purpose for which the evidence, information or action is sought.

5. The requested State may request additional information when it appears necessary for the execution of the request in accordance with its national law or when it can facilitate such execution.

Annex 82

UNGA, resolution 74/166, Situation of human rights in the Democratic People's Republic of Korea, UN doc. A/RES/74/166, 18 December 2019

Available at:

http://undocs.org/A/RES/74/166

French version available at:

http://undocs.org/fr/A/RES/74/166

United Nations A/RES/74/166

General Assembly

Distr.: General
27 January 2020

Seventy-fourth session
Agenda item 70 (c)
Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Resolution adopted by the General Assembly on 18 December 2019

[*on the report of the Third Committee (A/74/399/Add.3)*]

74/166. Situation of human rights in the Democratic People's Republic of Korea

The General Assembly,

Reaffirming that all States have an obligation to promote and protect human rights and fundamental freedoms and to fulfil the obligations that they have undertaken under the various international instruments,

Recalling all previous resolutions adopted by the General Assembly, the Commission on Human Rights and the Human Rights Council on the situation of human rights in the Democratic People's Republic of Korea, including Assembly resolution 73/180 of 17 December 2018 and Council resolution 40/20 of 22 March 2019,[1] and mindful of the need for the international community to strengthen its coordinated efforts aimed at achieving the implementation of those resolutions,

Deeply concerned at the grave human rights situation, the pervasive culture of impunity and the lack of accountability for human rights violations in the Democratic People's Republic of Korea,

Stressing the importance of following up on the recommendations contained in the report of the commission of inquiry on human rights in the Democratic People's Republic of Korea,[2] and expressing grave concern at the detailed findings contained therein,

Recalling the responsibility of the Democratic People's Republic of Korea to protect its population from crimes against humanity, and recalling also that the

[1] See *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 53* (A/74/53), chap. IV, sect. A.
[2] A/HRC/25/63.

19-22298 (E) 280120

commission of inquiry urged the leadership of the Democratic People's Republic of Korea to prevent and suppress crimes against humanity and to ensure that perpetrators are prosecuted and brought to justice,

Taking note of the report of the Special Rapporteur of the Human Rights Council on the situation of human rights in the Democratic People's Republic of Korea,[3] regretting that he still has not been allowed to visit the country and that he has received no cooperation from the authorities of the Democratic People's Republic of Korea, and taking note also of the comprehensive report of the Secretary-General on the situation of human rights in the Democratic People's Republic of Korea submitted in accordance with resolution 73/180,[4]

Mindful that the Democratic People's Republic of Korea is a party to the International Covenant on Civil and Political Rights,[5] the International Covenant on Economic, Social and Cultural Rights,[5] the Convention on the Rights of the Child,[6] the Convention on the Elimination of All Forms of Discrimination against Women[7] and the Convention on the Rights of Persons with Disabilities,[8] and urging full implementation of these Conventions, and of the recommendations contained in the concluding observations from treaty body reviews,

Noting the submission, in December 2018, by the Democratic People's Republic of Korea of its initial report on the implementation of the Convention on the Rights of Persons with Disabilities,[9]

Stressing the importance of submitting the Democratic People's Republic of Korea third periodic report to the Committee on Economic, Social and Cultural Rights, which has been overdue since 30 June 2008, and its third periodic report to the Human Rights Committee, which has been overdue since 1 January 2004,

Noting the visit of the Special Rapporteur of the Human Rights Council on the rights of persons with disabilities to the Democratic People's Republic of Korea in 2017, and encouraging the Democratic People's Republic of Korea to implement all of the recommendations contained in the report of the Special Rapporteur on her visit to the Democratic People's Republic of Korea submitted to the Human Rights Council at its thirty-seventh session,[10]

Stressing the importance of extending the cooperation of the Government of the Democratic People's Republic of Korea to other United Nations special procedures and human rights mechanisms, in particular the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, in accordance with their terms of reference,

Acknowledging the participation of the Democratic People's Republic of Korea in the third universal periodic review process, noting the acceptance by the Government of the Democratic People's Republic of Korea of 132 of the 262 recommendations,[11] and its stated commitment to implement them, while expressing its concern that the recommendations of the two previous reviews have not been implemented thus far,

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[3] A/74/275/Rev.1.
[4] A/74/268.
[5] See resolution 2200 A (XXI), annex.
[6] United Nations, *Treaty Series*, vol. 1577, No. 27531.
[7] Ibid., vol. 1249, No. 20378.
[8] Ibid., vol. 2515, No. 44910.
[9] CRPD/C/PRK/1.
[10] A/HRC/37/56/Add.1.
[11] A/HRC/42/10.

Annex 82

Noting with regret that independent civil society organizations cannot operate in the Democratic People's Republic of Korea and that, as a result, no civil society organization based in the Democratic People's Republic of Korea was able to submit a stakeholder report in the context of the universal periodic review process,

Noting the collaboration established between the Government of the Democratic People's Republic of Korea and the Office of the United Nations High Commissioner for Human Rights in providing human rights education to a small number of government officials in Geneva in May 2019, and urging that such technical cooperation be broadened,

Stressing the importance of extending the cooperation of the Government of the Democratic People's Republic of Korea to the Office of the United Nations High Commissioner for Human Rights field-based structure in the region,

Noting the collaboration established between the Government of the Democratic People's Republic of Korea and the United Nations Children's Fund and the World Health Organization in order to improve the health situation in the country,

Noting also the collaboration established between the Government of the Democratic People's Republic of Korea and the United Nations Children's Fund to improve the nutritional status of children and the quality of children's education,

Noting further the activities undertaken by the United Nations Development Programme, on a modest scale, in the Democratic People's Republic of Korea, and encouraging the engagement of the Government of the Democratic People's Republic of Korea with the international community to ensure that the programmes benefit the persons in need of assistance,

Noting the cooperation between the Government of the Democratic People's Republic of Korea and the World Food Programme, the United Nations Children's Fund and the Food and Agriculture Organization of the United Nations on a number of assessments, underscoring the importance of those assessments in analysing changes in the national, household and individual situation with regard to food security, nutrition, health, water and sanitation, and thereby in supporting donor confidence in the targeting of aid programmes and monitoring, and noting with appreciation the work of international aid operators,

Stressing the importance of international humanitarian aid organizations to carry out independent needs assessments and implement their humanitarian programmes consistent with international standards and humanitarian principles, including in areas with no operational presence, and expressing concern about the latest action taken by the Democratic People's Republic of Korea to reduce the number of United Nations agencies' staff in the country,

Taking note of the United Nations humanitarian report entitled "Democratic People's Republic of Korea 2019: needs and priorities" and the joint rapid food security assessments conducted by the Food and Agriculture Organization of the United Nations and the World Food Programme and their calls to address the critical humanitarian needs in the Democratic People's Republic of Korea,

Noting with concern the findings of the United Nations that 10.9 million people in the Democratic People's Republic of Korea are estimated to be undernourished, one third of children 6 to 23 months of age do not receive a minimum acceptable diet, 1 in 5 children suffer from stunting (chronic malnutrition), around 9 million people are estimated to have limited access to quality health services, and 39 per cent, or an estimated 9.75 million, of people do not have access to a safely managed drinking water source, including 56 per cent of people living in rural areas, condemning the Democratic People's Republic of Korea for diverting its resources into pursuing

nuclear weapons and ballistic missiles over the welfare of its people, and emphasizing the necessity for the Democratic People's Republic of Korea to respect and ensure the welfare and inherent dignity of the people in the country, as referred to by the Security Council in its resolutions 2321 (2016) of 30 November 2016, 2371 (2017) of 5 August 2017, 2375 (2017) of 11 September 2017 and 2397 (2017) of 22 December 2017,

Taking note of the strategic framework for cooperation between the United Nations and the Government of the Democratic People's Republic of Korea for the period 2017–2021 and the Government's commitment in accordance with the principles, goals and targets of the Sustainable Development Goals[12] and in line with its commitments to international agreements and conventions,

Noting with grave concern the urgency and importance of the issue of international abductions and of the immediate return of all abductees, the long years of suffering experienced by abductees and their families, and the lack of positive action by the Democratic People's Republic of Korea, notably since the investigations on all the Japanese nationals commenced on the basis of the government-level consultations held between the Democratic People's Republic of Korea and Japan in May 2014, and calling upon the Democratic People's Republic of Korea to address all allegations of enforced disappearances, provide accurate information to the families of the victims on the fates and whereabouts of their missing relatives and resolve all issues related to all abductees at the earliest possible date, in particular the return of abductees of Japan and the Republic of Korea,

Noting the urgency and importance of the issue of separated families, including affected Koreans worldwide, in this regard welcoming the resumption of the reunions of separated families across the border in August 2018 and the commitments made on this issue at the inter-Korean summit held on 19 September 2018 to strengthen humanitarian cooperation to fundamentally resolve the issue of separated families, and highlighting the importance of allowing permanent regular reunions and contact between separated families, including through meetings at an easily accessible location and regular facility, regular written correspondence, video reunions, and the exchange of video messages, in accordance with relevant Security Council resolutions,

Welcoming and further encouraging the efforts of Member States to raise international awareness about the human rights situation in the Democratic People's Republic of Korea, and noting that human rights, including gender equality, are intrinsically linked to peace and security,

Welcoming the diplomatic efforts, and noting the importance of dialogue and engagements, including inter-Korean dialogue, to seek improvement of the human rights and humanitarian situation in the country,

Underlining the efforts of the Secretary-General to contribute to improving inter-Korean relations and promoting reconciliation and stability on the Korean Peninsula and the well-being of the Korean people,

1. *Condemns* the long-standing and ongoing systematic, widespread and gross violations of human rights in and by the Democratic People's Republic of Korea, including those that may amount to crimes against humanity according to the commission of inquiry on human rights in the Democratic People's Republic of Korea, established by the Human Rights Council in its resolution 22/13 of 21 March 2013,[13] and those identified by the group of independent experts on accountability for

[12] See resolution 70/1.

[13] See *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 53*

human rights violations in the Democratic People's Republic of Korea,[14] established pursuant to Human Rights Council resolution 31/18 of 23 March 2016,[15] and by the Office of the United Nations High Commissioner for Human Rights, and the continuing impunity for such violations;

2. *Expresses its very serious concern* about:

(a) The persistence of continuing reports of violations of human rights, including the detailed findings made by the commission of inquiry in its report,[2] such as:

(i) Torture and other cruel, inhuman or degrading treatment or punishment, including inhuman conditions of detention; rape; public executions; extrajudicial and arbitrary detention; the absence of due process and the rule of law, including fair trial guarantees and an independent judiciary; extrajudicial, summary and arbitrary executions; the imposition of the death penalty for political and religious reasons; collective punishments extending up to three generations; and the extensive use of forced labour;

(ii) The existence of an extensive system of political prison camps, where a vast number of persons are deprived of their liberty and subjected to deplorable conditions, including forced labour, and where alarming violations of human rights are perpetrated;

(iii) Enforced and involuntary disappearances of persons by arrest, detention or abduction against their will; refusal to disclose the fate and whereabouts of the persons concerned; and refusal to acknowledge the deprivation of their liberty, which places such persons subjected thereto outside the protection of the law and which has had the effect of inflicting severe suffering on them and their families;

(iv) The forcible transfer of populations and the limitations imposed on every person who wishes to move freely within the country and travel abroad, including the punishment of those who leave or try to leave the country without permission, or their families, as well as punishment of persons who are returned;

(v) The situation of refugees and asylum seekers expelled or returned to the Democratic People's Republic of Korea and retaliations against citizens of the Democratic People's Republic of Korea who have been repatriated from abroad, leading to punishments of internment, torture, other cruel, inhuman or degrading treatment, sexual violence or the death penalty, and in this regard strongly urges all States to respect the fundamental principle of non-refoulement, to treat those who seek refuge humanely and to ensure unhindered access to the United Nations High Commissioner for Refugees and his Office, with a view to protecting the human rights of those who seek refuge, and once again urges States parties to comply with their obligations under the 1951 Convention relating to the Status of Refugees[16] and the 1967 Protocol thereto[17] in relation to refugees from the Democratic People's Republic of Korea who are covered by those instruments;

(vi) All-pervasive and severe restrictions, both online and offline, on the freedoms of thought, conscience, religion or belief, opinion and expression,

(A/68/53), chap. IV, sect. A.

[14] See A/HRC/34/66/Add.1.

[15] See *Official Records of the General Assembly, Seventy-first Session, Supplement No. 53* (A/71/53), chap. IV, sect. A.

[16] United Nations, *Treaty Series*, vol. 189, No. 2545.

[17] Ibid., vol. 606, No. 8791.

peaceful assembly and association, the right to privacy and equal access to information, by such means as the unlawful and arbitrary surveillance, persecution, torture, imprisonment and, in some instances, summary executions of individuals exercising their freedom of opinion and expression, religion or belief, and their families, and the right of everyone, including women, to take part in the conduct of public affairs, directly or through freely chosen representatives, of his or her country;

(vii) Violations of economic, social and cultural rights, which have led to food insecurity, severe hunger, malnutrition, widespread health problems and other hardship for the population in the Democratic People's Republic of Korea, in particular for women, children, persons with disabilities, older persons and political prisoners;

(viii) Violations of the human rights and fundamental freedoms of women and girls, in particular the creation of internal conditions that force women and girls to leave the country and make them extremely vulnerable to trafficking in persons for the purpose of prostitution, domestic servitude or forced marriage and the subjection of women and girls to gender-based discrimination, including in the political and social spheres, forced abortions and other forms of sexual and gender-based violence;

(ix) Violations of the human rights and fundamental freedoms of children, in particular the continued lack of access to basic economic, social and cultural rights for many children, and in this regard notes the particularly vulnerable situation faced by, inter alia, returned or repatriated children, street children, children with disabilities, children whose parents are detained, children living in detention or in institutions and children in conflict with the law;

(x) Violations of the human rights and fundamental freedoms of persons with disabilities, especially violations involving the use of collective camps and coercive measures that target the rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and allegations of the possible use of persons with disabilities in medical testing, forced relocation to rural areas and separation of children with disabilities from their parents;

(xi) Violations of workers' rights, including the right to freedom of association and effective recognition of the right to collective bargaining, the right to strike as defined by the obligations of the Democratic People's Republic of Korea under the International Covenant on Economic, Social and Cultural Rights,[5] and the prohibition of the economic exploitation of children and of any harmful or hazardous work of children as defined by the obligations of the Democratic People's Republic of Korea under the Convention on the Rights of the Child,[6] as well as the exploitation of workers sent abroad from the Democratic People's Republic of Korea to work under conditions that reportedly amount to forced labour, recalling paragraph 11 of Security Council resolution 2371 (2017) and paragraph 17 of resolution 2375 (2017), in which the Council decided that Member States shall not provide work authorizations for nationals of the Democratic People's Republic of Korea in their jurisdictions, and also recalling paragraph 8 of Council resolution 2397 (2017), in which the Council decided that Member States shall repatriate to the Democratic People's Republic of Korea all nationals from the Democratic People's Republic of Korea earning income in that Member State's jurisdiction and all government safety oversight attachés of the Democratic People's Republic of Korea monitoring workers from the Democratic People's Republic of Korea abroad immediately, but not later than 24 months from 22 December 2017, unless the Member State

determines that a Democratic People's Republic of Korea national is a national of that Member State or a Democratic People's Republic of Korea national's repatriation is prohibited, subject to applicable national and international law, including international refugee law and international human rights law, the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations[18] and the Convention on the Privileges and Immunities of the United Nations,[19] and urges the Democratic People's Republic of Korea to promote, respect and protect the human rights of workers, including workers repatriated to the Democratic People's Republic of Korea;

(xii) Discrimination based on the *songbun* system, which classifies people on the basis of State-assigned social class and birth and also includes consideration of political opinions and religion;

(xiii) Violence and discrimination against women, including unequal access to employment, discriminatory laws and regulations;

(b) The continued refusal of the Government of the Democratic People's Republic of Korea to extend an invitation to the Special Rapporteur of the Human Rights Council on the situation of human rights in the Democratic People's Republic of Korea or to extend cooperation to the Special Rapporteur and several other United Nations special procedures, in accordance with their terms of reference, as well as to other United Nations human rights mechanisms;

(c) The continued lack of acknowledgement by the Government of the Democratic People's Republic of Korea of the grave human rights situation in the country and its consequential lack of action to report on the state of implementation of the recommendations contained in the outcome of its first[20] and second[21] universal periodic reviews and to give consideration to the concluding observations of the treaty bodies;

3. *Condemns* the systematic abduction, denial of repatriation and subsequent enforced disappearance of persons, including those from other countries, on a large scale and as a matter of State policy, and in this regard strongly calls upon the Government of the Democratic People's Republic of Korea urgently to resolve these issues of international concern, in a transparent manner, including by ensuring the immediate return of abductees;

4. *Underscores its very serious concern* regarding reports of torture, summary executions, arbitrary detention, abductions and other forms of human rights violations and abuses that the Democratic People's Republic of Korea commits against citizens of other countries within and outside of its territory;

5. *Expresses its very deep concern* at the precarious humanitarian situation in the country, which could rapidly deteriorate owing to limited resilience to natural disasters and to government policies causing limitations in the availability of and access to adequate food, compounded by structural weaknesses in agricultural production resulting in significant shortages of diversified food and the State restrictions on the cultivation of and trade in foodstuffs, as well as the prevalence of chronic and acute malnutrition, particularly among the most vulnerable groups, pregnant and lactating women, children, persons with disabilities, older persons and prisoners, including political prisoners, exacerbated due to lack of access to basic services, including health care as well as water, sanitation and hygiene services, and

[18] See resolution 169 (II).
[19] Resolution 22 A (I).
[20] A/HRC/13/13.
[21] A/HRC/27/10.

urges the Government of the Democratic People's Republic of Korea, in this regard, to take preventive and remedial action, cooperating with international donor and humanitarian agencies for accessing people belonging to vulnerable groups, facilitating the implementation of programmes and monitoring humanitarian assistance consistent with international standards;

6. *Welcomes* the latest report to the Human Rights Council of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea;[22]

7. *Reiterates its appreciation* for the report of the group of independent experts on accountability for human rights violations in the Democratic People's Republic of Korea,[23] established pursuant to Human Rights Council resolution 31/18, including options to seek accountability and secure truth and justice for all victims;

8. *Welcomes* the report of the United Nations High Commissioner for Human Rights[24] on steps taken pursuant to Human Rights Council resolution 34/24 of 24 March 2017[25] to strengthen the capacity of the Office of the United Nations High Commissioner for Human Rights, including its field-based structure in Seoul, to allow the implementation of relevant recommendations made by the group of independent experts on accountability aimed at strengthening current monitoring and documentation efforts, establishing a central repository for information and evidence and having experts in legal accountability assess all information and testimonies with a view to developing possible strategies to be used in any future accountability process;

9. *Also welcomes* the steps taken pursuant to Human Rights Council resolution 40/20 to continue the efforts outlined above, expresses strong support for the work being undertaken by the Office of the High Commissioner in furtherance of the resolution, with the aim of ensuring accountability for suspected violations of international law committed in and by the Democratic People's Republic of Korea, and calls upon all States to support such efforts;

10. *Reiterates its appreciation* for the work of the commission of inquiry, recognizes the continuing importance of its report, and regrets that the commission received no cooperation from the authorities of the Democratic People's Republic of Korea, including with regard to access to the country;

11. *Acknowledges* the commission of inquiry's finding that the body of testimony gathered and the information received provide reasonable grounds to believe that crimes against humanity have been committed in the Democratic People's Republic of Korea, pursuant to policies established at the highest level of the State for decades and by institutions under the effective control of its leadership, which was confirmed by the United Nations High Commissioner for Human Rights in her report to the Human Rights Council submitted pursuant to resolution 34/24;

12. *Expresses its concern* at the failure of the authorities of the Democratic People's Republic of Korea to prosecute those responsible for human rights violations, including violations which the commission of inquiry has said may amount to crimes against humanity, and encourages the international community to cooperate with accountability efforts and to ensure that such crimes do not remain unpunished;

[22] A/HRC/40/66.
[23] A/HRC/34/66/Add.1.
[24] A/HRC/40/36.
[25] See *Official Records of the General Assembly, Seventy-second Session, Supplement No. 53* (A/72/53), chap. IV, sect. A.

13. *Encourages* the Security Council to continue its consideration of the relevant conclusions and recommendations of the commission of inquiry and take appropriate action to ensure accountability, including through consideration of referral of the situation in the Democratic People's Republic of Korea to the International Criminal Court and consideration of further sanctions in order to target effectively those who appear to be most responsible for human rights violations that the commission has said may constitute crimes against humanity;

14. *Also encourages* the Security Council to continue to discuss the situation in the Democratic People's Republic of Korea, including the country's human rights situation, in the light of the serious concerns expressed in the present resolution, and looks forward to its continued and more active engagement on this matter;

15. *Encourages* the continuing endeavours of the Office of the United Nations High Commissioner for Human Rights field-based structure in Seoul and its efforts in developing a central repository for information and evidence relating to suspected violations of international law, and assessing all such evidence and information in order to develop possible strategies to be used in any future accountability process, and welcomes its regular reporting to the Human Rights Council;

16. *Calls upon* Member States to undertake to ensure that the field-based structure of the Office of the High Commissioner can function with independence, has sufficient resources and support to fulfil its mandate, enjoys full cooperation with relevant Member States and is not subjected to any reprisals or threats;

17. *Strongly urges* the Government of the Democratic People's Republic of Korea to respect fully all human rights and fundamental freedoms and, in this regard:

(a) To immediately put an end to the systematic, widespread and grave violations of human rights emphasized above, inter alia, by implementing fully the measures set out in the above-mentioned resolutions of the General Assembly, the Commission on Human Rights and the Human Rights Council, and the recommendations addressed to the Democratic People's Republic of Korea by the Council in the context of the universal periodic review and by the commission of inquiry, the United Nations special procedures and treaty bodies;

(b) To immediately close the political prison camps and to release all political prisoners unconditionally and without any delay;

(c) To protect its inhabitants, address the issue of impunity and ensure that those responsible for crimes involving violations of human rights are brought to justice before an independent judiciary;

(d) To tackle the root causes leading to outflows of migrants and refugees and to prosecute those involved in migrant smuggling, trafficking in human beings and extortion, while not criminalizing the victims of trafficking;

(e) To ensure that everyone within the territory of the Democratic People's Republic of Korea enjoys the right to liberty of movement and is free to leave the country, including for the purpose of seeking asylum outside the Democratic People's Republic of Korea, without interference by the authorities of the Democratic People's Republic of Korea;

(f) To ensure that citizens of the Democratic People's Republic of Korea who are expelled or returned to the Democratic People's Republic of Korea are able to return in safety and dignity, are treated humanely and are not subjected to any kind of punishment, and to provide information on their status and treatment;

(g) To provide citizens of other countries detained in the Democratic People's Republic of Korea with protections, including freedom of communication with, and

access to, consular officers in accordance with the Vienna Convention on Consular Relations,[26] to which the Democratic People's Republic of Korea is a party, and any other necessary arrangements to confirm their status and to communicate with their families;

(h) To extend its full cooperation to the Special Rapporteur, including by granting him full, free and unimpeded access to the Democratic People's Republic of Korea, and to other special procedures of the Human Rights Council as well as to other United Nations human rights mechanisms so that a full needs assessment of the human rights situation may be made;

(i) To engage in technical cooperation activities in the field of human rights with the United Nations High Commissioner for Human Rights and her Office, including the field-based structure in the region, as pursued by the High Commissioner in recent years, with a view to improving the situation of human rights in the country;

(j) To implement the accepted recommendations stemming from the universal periodic reviews and to consider positively those recommendations which are still under consideration from the third review cycle, and to submit a midterm voluntary report to detail progress on the implementation of recommendations accepted from the third cycle;

(k) To become a member of the International Labour Organization, to enact legislation and adopt practices to comply with international labour standards and to consider ratifying all the relevant conventions, in particular the core labour conventions of the International Labour Organization;

(l) To continue and reinforce its cooperation with United Nations humanitarian agencies;

(m) To ensure full, safe and unhindered access of persons in vulnerable situations to humanitarian aid, and take measures to allow humanitarian agencies to survey the needs of persons belonging to vulnerable groups, to obtain critical baseline data and to enable the unhindered and impartial delivery of such humanitarian aid to all parts of the country, on the basis of need in accordance with humanitarian principles, as it pledged to do, to furthermore ensure access to adequate basic services and implement more effective food security and nutrition policies, including through sustainable agriculture, sound food production and distribution measures and the allocation of more funds to the food sector, and to allow adequate monitoring of humanitarian assistance;

(n) To further improve cooperation with the United Nations country team members and development agencies so that they can directly contribute to improving the living conditions of the civilian population, including progress towards the achievement of the Sustainable Development Goals;[12]

(o) To consider ratifying and acceding to the remaining international human rights treaties, which would enable a dialogue with the human rights treaty bodies, to resume reporting to monitoring bodies on treaties to which it is a party, to participate meaningfully in treaty body reviews, and to give consideration to the concluding observations of such bodies in order to improve the human rights situation in the country;

18. *Urges* the Government of the Democratic People's Republic of Korea to implement the recommendations of the commission of inquiry, the group of independent experts, and the Office of the United Nations High Commissioner for Human Rights without delay;

[26] United Nations, *Treaty Series*, vol. 596, No. 8638.

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19. *Reiterates* the importance of maintaining high on the international agenda the grave human rights situation in the Democratic People's Republic of Korea, including through sustained communications, advocacy and outreach initiatives, and requests the Office of the United Nations High Commissioner for Human Rights to strengthen those activities;

20. *Encourages* all Member States, the General Assembly, the Human Rights Council, the Office of the High Commissioner, the United Nations Secretariat, relevant specialized agencies, regional intergovernmental organizations and forums, civil society organizations, foundations and engaged business enterprises and other stakeholders towards which the commission of inquiry has directed recommendations to implement or take forward those recommendations;

21. *Encourages* the United Nations system as a whole to continue to address the grave human rights situation in the Democratic People's Republic of Korea in a coordinated and unified manner;

22. *Encourages* the relevant United Nations programmes, funds, specialized agencies and other related organizations to assist the Government of the Democratic People's Republic of Korea in the implementation of recommendations stemming from the universal periodic reviews, human rights treaty body reviews and from the report of the commission of inquiry;

23. *Calls upon* the Democratic People's Republic of Korea to engage constructively with international interlocutors with a view to promoting concrete improvements in the human rights situation on the ground, including through human rights dialogues, official visits to the country that include adequate access to fully assess human rights conditions, cooperation initiatives and more people-to-people contact as a matter of priority;

24. *Decides* to continue its examination of the situation of human rights in the Democratic People's Republic of Korea at its seventy-fifth session, and to this end requests the Secretary-General to submit a comprehensive report on the situation of human rights in the Democratic People's Republic of Korea, and requests the Special Rapporteur to continue to report his findings and recommendations, as well as to report on the follow-up to the implementation of the recommendations of the commission of inquiry.

50th plenary meeting
18 December 2019

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Voting record on UNGA resolution 74/166

Available at:

https://digitallibrary.un.org/record/3849187

Annex 83

Situation of human rights in the Democratic People's Republic of Korea :

Situation of human rights in the Democratic People's Republic of Korea : resolution / adopted by the General Assembly

2019

Details

Title	Situation of human rights in the Democratic People's Republic of Korea : resolution / adopted by the General Assembly
Agenda	A/74/251 70c Human rights situations and reports of special rapporteurs and representatives. HUMAN RIGHTS--REPORTS A/74/251 70c[4] HUMAN RIGHTS--DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA
Resolution	A/RES/74/166
Meeting record	A/74/PV.50
Draft resolution	A/C.3/74/L.26
Committee report	A/74/399/Add.3
Note	ADOPTED WITHOUT VOTE

Annex 83

Situation of human rights in the Democratic People's Republic of Korea :

Vote date	2019-12-18
Collections	Resource Type > Voting Data

Annex 84

UNGA, resolution 74/169, Situation of human rights in the Syrian Arab Republic, UN doc. A/RES/74/169, 18 December 2019

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United Nations A/RES/74/169

General Assembly

Distr.: General
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Seventy-fourth session
Agenda item 70 (c)
Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Resolution adopted by the General Assembly on 18 December 2019

[*on the report of the Third Committee (A/74/399/Add.3)*]

74/169. Situation of human rights in the Syrian Arab Republic

The General Assembly,

Guided by the Charter of the United Nations,

Reaffirming the purposes and principles of the Charter, the Universal Declaration of Human Rights[1] and relevant international human rights treaties, including the International Covenants on Human Rights,[2]

Reaffirming its strong commitment to the sovereignty, independence, unity and territorial integrity of the Syrian Arab Republic and to the principles of the Charter, and demanding that the Syrian regime meet its responsibility to protect the Syrian population and to respect, protect and fulfil the human rights of all persons within its jurisdiction,

Recalling its resolutions 66/176 of 19 December 2011, 66/253 A of 16 February 2012, 66/253 B of 3 August 2012, 67/183 of 20 December 2012, 67/262 of 15 May 2013, 68/182 of 18 December 2013, 69/189 of 18 December 2014, 70/234 of 23 December 2015, 71/130 of 9 December 2016, 71/203 of 19 December 2016, 71/248 of 21 December 2016 and 73/182 of 17 December 2018, Human Rights Council resolutions S-16/1 of 29 April 2011,[3] S-17/1 of 23 August 2011,[3] S-18/1 of 2 December 2011,[4] 19/1 of 1 March 2012,[5] 19/22 of 23 March 2012,[5] S-19/1 of 1 June

[1] Resolution 217 A (III).
[2] Resolution 2200 A (XXI), annex.
[3] See *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 53* (A/66/53), chap. I.
[4] Ibid., *Supplement No. 53B* and corrigendum (A/66/53/Add.2 and A/66/53/Add.2/Corr.1), chap. II.
[5] Ibid., *Sixty-seventh Session, Supplement No. 53* and corrigendum (A/67/53 and A/67/53/Corr.1), chap. III, sect. A.

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2012,[6] 20/22 of 6 July 2012,[7] 21/26 of 28 September 2012,[8] 22/24 of 22 March 2013,[9] 23/1 of 29 May 2013,[10] 23/26 of 14 June 2013,[10] 24/22 of 27 September 2013,[11] 25/23 of 28 March 2014,[12] 26/23 of 27 June 2014,[13] 27/16 of 25 September 2014,[14] 28/20 of 27 March 2015,[15] 29/16 of 2 July 2015,[16] 30/10 of 1 October 2015,[17] 31/17 of 23 March 2016,[18] 32/25 of 1 July 2016,[19] 33/23 of 30 September 2016,[20] S-25/1 of 21 October 2016,[21] 34/26 of 24 March 2017,[22] 35/26 of 23 June 2017,[23] 36/20 of 29 September 2017[24] and 39/15 of 28 September 2018,[25] Security Council resolutions 1325 (2000) of 31 October 2000, 2042 (2012) of 14 April 2012, 2043 (2012) of 21 April 2012, 2118 (2013) of 27 September 2013, 2139 (2014) of 22 February 2014, 2165 (2014) of 14 July 2014, 2170 (2014) of 15 August 2014, 2178 (2014) of 24 September 2014, 2191 (2014) of 17 December 2014, 2209 (2015) of 6 March 2015, 2235 (2015) of 7 August 2015, 2254 (2015) of 18 December 2015, 2258 (2015) of 22 December 2015, 2268 (2016) of 26 February 2016, 2286 (2016) of 3 May 2016, 2314 (2016) of 31 October 2016, 2319 (2016) of 17 November 2016, 2328 (2016) of 19 December 2016, 2332 (2016) of 21 December 2016, 2336 (2016) of 31 December 2016, 2393 (2017) of 19 December 2017, 2401 (2018) of 24 February 2018 and 2449 (2018) of 13 December 2018 and the statements by the President of the Security Council of 3 August 2011,[26] 2 October 2013,[27] 17 August 2015[28] and 8 October 2019,[29]

Strongly condemning the grave human rights situation in the Syrian Arab Republic, the indiscriminate killing and deliberate targeting of civilians, including humanitarian workers, as such, including those involving the continued indiscriminate use of heavy weapons and aerial bombardments, which has caused more than 500,000 fatalities, including the killing of more than 17,000 children, the continued widespread and systematic gross violations, as well as abuses, of human rights and violations of international humanitarian law, including by the starvation of civilians as a method of warfare and the use of chemical weapons, including chlorine gas, sarin and sulfur mustard, which are prohibited under international law, and acts of violence that foment sectarian tensions by the Syrian regime against the Syrian population,

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[6] Ibid., chap. V.
[7] Ibid., chap. IV, sect. A.
[8] Ibid., *Supplement No. 53A* (A/67/53/Add.1), chap. III.
[9] Ibid., *Sixty-eighth Session, Supplement No. 53* (A/68/53), chap. IV, sect. A.
[10] Ibid., chap. V, sect. A.
[11] Ibid., *Supplement No. 53A* (A/68/53/Add.1), chap. III.
[12] Ibid., *Sixty-ninth Session, Supplement No. 53* (A/69/53), chap. IV, sect. A.
[13] Ibid., chap. V, sect. A.
[14] Ibid., *Supplement No. 53A* and corrigenda (A/69/53/Add.1, A/69/53/Add.1/Corr.1 and A/69/53/Add.1/Corr.2), chap. IV, sect. A.
[15] Ibid., *Seventieth Session, Supplement No. 53* (A/70/53), chap. II.
[16] Ibid., chap. V, sect. A.
[17] Ibid., *Supplement No. 53A* (A/70/53/Add.1), chap. II.
[18] Ibid., *Seventy-first Session, Supplement No. 53* (A/71/53), chap. II.
[19] Ibid., chap. IV, sect. A.
[20] Ibid., *Supplement No. 53A* and corrigendum (A/71/53/Add.1 and A/71/53/Add.1/Corr.1), chap. II.
[21] Ibid., *Supplement No. 53B* and corrigendum (A/71/53/Add.2 and A/71/53/Add.2/Corr.1), chap. II.
[22] Ibid., *Seventy-second Session, Supplement No. 53* (A/72/53), chap. II.
[23] Ibid., chap. V, sect. A.
[24] Ibid., *Supplement No. 53A* (A/72/53/Add.1), chap. III.
[25] Ibid., *Seventy-third Session, Supplement No. 53A* (A/73/53/Add.1), chap. III.
[26] S/PRST/2011/16; see *Resolutions and Decisions of the Security Council, 1 August 2011–31 July 2012* (S/INF/67).
[27] S/PRST/2013/15; see *Resolutions and Decisions of the Security Council, 1 August 2013–31 July 2014* (S/INF/69).
[28] S/PRST/2015/15; see *Resolutions and Decisions of the Security Council, 1 August 2015–31 December 2016* (S/INF/71).
[29] S/PRST/2019/12.

Reiterating that the only sustainable solution to the current crisis in the Syrian Arab Republic is through an inclusive and Syrian-led political process, under the auspices of the United Nations, that meets the legitimate aspirations of the Syrian people, and the establishment of a constitutional committee that would prepare the work for free and fair elections and political transition in line with Security Council resolution 2254 (2015), with a view to establishing credible, inclusive and non-sectarian governance, with the full, equal and meaningful participation of women, welcoming the establishment of the Constitutional Committee, reaffirming in this regard the important role of women in the prevention and resolution of conflicts and in peacebuilding, stressing the importance of their full participation and involvement in all efforts for the maintenance and promotion of peace and security and the need to increase their role in decision-making with regard to conflict prevention and resolution, and recognizing the work carried out by the Special Envoy of the Secretary-General for Syria to that end,

Welcoming the efforts of the Special Envoy in establishing the Constitutional Committee to advance United Nations efforts to achieve a sustainable political solution to the conflict in the Syrian Arab Republic in line with Security Council resolution 2254 (2015), and recalling that pursuant to resolution 2254 (2015) a political solution to the conflict in the Syrian Arab Republic also comprises free and fair elections, under the supervision of the United Nations, to the satisfaction of the governance and to the highest international standards of transparency and accountability, with all Syrians, including displaced persons and refugees, eligible to participate, as well as the establishment of a neutral and safe environment,

Reconfirming its endorsement of the Geneva communiqué of 30 June 2012,[30] endorsing the joint statement on the outcome of the multilateral talks on Syria held in Vienna of 30 October 2015 and the statement of the International Syria Support Group of 14 November 2015 (the Vienna statements) in pursuit of the full implementation of the Geneva communiqué, facilitated by the Special Envoy, as the basis for a Syrian-led and Syrian-owned political transition in order to end the conflict in the Syrian Arab Republic, and stressing that the Syrian people will decide the future of the Syrian Arab Republic,

Noting with deep concern the culture of impunity for the most serious violations of international law and violations and abuses of human rights law committed during the present conflict, which has provided a fertile ground for further violations and abuses,

Emphasizing the importance of accountability for the most serious crimes committed during the conflict for ensuring sustainable peace,

Recalling that, amid expressions of popular discontent over restrictions on the enjoyment of civil, political, economic and social rights, civilian protests erupted in Dar'a in March 2011, and noting that the violent oppression of civilian protests by the Syrian regime, which later escalated to the direct shelling of civilians, fuelled the escalation of armed violence and violent extremist groups and terrorist groups,

Recalling also all relevant resolutions on the safety and security of humanitarian personnel and the protection of United Nations personnel, including its resolution 73/137 of 14 December 2018, as well as Security Council resolutions on the protection of humanitarian personnel, including resolution 2175 (2014) of 29 August 2014, the relevant statements by the President of the Security Council referring to the specific obligations under international humanitarian law to respect and protect, in situations of armed conflict, medical personnel and humanitarian workers who participate exclusively in medical duties, their means of transport, equipment,

[30] Security Council resolution 2118 (2013), annex II.

hospitals and facilities, and to ensure that the wounded and sick receive, to the maximum extent practicable and with the least possible delay, the medical care required, while also recalling that, under international law, deliberate attacks against hospitals and places where the sick and wounded are collected, provided that they are not targets, and attacks on buildings, materials, medical units, means of transport and individuals using the distinctive emblems of the Geneva Conventions of 12 August 1949[31] in accordance with international law relate to war crimes, and recalling the applicable rules of international humanitarian law whereby no one should be punished for carrying out medical activities consistent with medical ethics,

Expressing grave concern at the indiscriminate use of force by the Syrian regime against civilians, which has caused immense human suffering and fomented the spread of extremism and extremist groups and which demonstrates the continuing failure of the Syrian regime to protect the population and implement the relevant resolutions and decisions of United Nations bodies and has created a safe haven and operating environment for crimes against humanity,

Expressing grave concern also at the remaining presence of extremism and violent extremist groups, terrorists and terrorist groups, and strongly condemning all violations and abuses of human rights and violations of international humanitarian law committed in the Syrian Arab Republic by any party to the conflict, in particular so-called ISIL (also known as Da'esh), the Nusrah Front, Al-Qaida-affiliated terrorist groups, militias fighting on behalf of the regime, and other violent extremist groups,

Noting with serious concern the observation of the Independent International Commission of Inquiry on the Syrian Arab Republic that non-State armed groups still resort to the use of force against civilians,

Reaffirming its condemnation in the strongest possible terms of the use of chemical weapons by anyone under any circumstances, emphasizing that any use of chemical weapons anywhere, at any time, by anyone, under any circumstances is unacceptable and is and would be a violation of international law, and expressing its strong conviction that those individuals responsible for the use of chemical weapons must and should be held accountable,

Condemning in the strongest possible terms the fact that chemical weapons have been used since 2012 in the Syrian Arab Republic, including as reported by the Organisation for the Prohibition of Chemical Weapons-United Nations Joint Investigative Mechanism in its reports of 2016 and 2017,[32] concluding that the Syrian Arab Armed Forces were responsible for the attacks which released toxic substances in Talmenes in 2014 and in Sarmin and Qmenas in 2015, that ISIL (also known as Da'esh) used sulfur mustard in Marea in 2015 and in Umm Hawsh in 2016 and that the Syrian Arab Republic was responsible for the release of sarin at Khan Shaykhun in 2017, and accordingly noting with great concern the reports of the fact-finding mission of the Organisation for the Prohibition of Chemical Weapons regarding incidents in Ltamenah[33] and Saraqib,[34] as well as the final report regarding the incident involving alleged use of toxic chemicals as a weapon in Duma,[35] which concluded that there were reasonable grounds to believe that the use of a toxic chemical as a weapon had taken place, and demanding that the perpetrators immediately desist from any further use of chemical weapons,

[31] United Nations, *Treaty Series*, vol. 75, Nos. 970–973.
[32] See S/2016/738/Rev.1, S/2016/888 and S/2017/904.
[33] See S/2017/931, annex, and S/2018/620, annex.
[34] See S/2018/478, annex.
[35] See S/2019/208, annex.

Expressing support for the work carried out by the Independent International Commission of Inquiry on the Syrian Arab Republic, welcoming its reports, strongly condemning the lack of cooperation by the Syrian regime with the Commission of Inquiry, reiterating its decision to transmit the reports of the Commission of Inquiry to the Security Council, expressing its appreciation to the Commission of Inquiry for its briefings to members of the Security Council, and requesting that the Commission of Inquiry continue to brief the General Assembly and members of the Security Council,

Welcoming the reports for 2018 and 2019 of the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011[36] and their consideration by the General Assembly, noting with serious concern the observation of the Commission of Inquiry that, since March 2011, the Syrian regime has conducted widespread attacks against the civilian population as a matter of policy, including targeted attacks on protected persons and objects, including medical facilities, personnel and transport and blocked humanitarian convoys, as well as enforced disappearances, torture in detention, summary executions and other violations and abuses, underscoring the need for those allegations to be examined and evidence to be collected and made available for future accountability efforts, and recalling the United Nations decision and efforts to formally establish the board of inquiry tasked with probing attacks that hit deconflicted civilian sites in the north-west of the Syrian Arab Republic,

Strongly condemning the reported killing of detainees in Syrian military intelligence facilities and the widespread practice of enforced disappearance, arbitrary detention and the use of sexual and gender-based violence and torture in detention centres referred to in the reports of the Commission of Inquiry, including, but not limited to, Branch 215, Branch 227, Branch 235, Branch 251, the Air Force Intelligence Investigation Branch at Mazzah military airport and Saydnaya prison, including the reported practice of mass hangings by the regime, as well as the reported killing of detainees at military hospitals, including Tishrin and Harasta hospitals,

Recalling the statements made by the Secretary-General, the United Nations High Commissioner for Human Rights and the special procedures of the Human Rights Council that crimes against humanity and war crimes are likely to have been committed in the Syrian Arab Republic, noting the repeated encouragement by the High Commissioner for the Security Council to refer the situation to the International Criminal Court, and regretting that a draft resolution[37] was not adopted notwithstanding broad support from Member States,

Calling for the immediate repeal of Law No. 10/2018, concerned about the Syrian regime's infringement on the housing, land and property of Syrians, particularly through the dispossession of displaced Syrians' land and property in the national legislation and similar measures, which would have a significant detrimental impact on the rights of Syrians displaced by the conflict to claim their property and to return to their homes in a safe, voluntary and dignified manner when the situation on the ground allows it,

Expressing concern that the implementation of Security Council resolutions 2139 (2014), 2165 (2014), 2191 (2014), 2254 (2015), 2258 (2015), 2268 (2016), 2286 (2016), 2393 (2017), 2401 (2018) and 2449 (2018) remains largely unfulfilled, and noting the urgent need to strengthen efforts to address the humanitarian situation

[36] A/73/295, A/73/741 and A/74/313.
[37] S/2014/348.

in the Syrian Arab Republic, including through protection of civilians and full, immediate, unimpeded and sustained humanitarian access,

Recalling its commitment to Security Council resolutions 2170 (2014), 2178 (2014), and 2253 (2015) of 17 December 2015,

Alarmed that more than 5.6 million refugees, including more than 3.8 million women and children, have been forced to flee the Syrian Arab Republic and that 13 million people in the Syrian Arab Republic, of whom 6.2 million are internally displaced, require urgent humanitarian assistance, which has resulted in an influx of Syrian refugees into neighbouring countries, other countries in the region and beyond, and alarmed at the risk the situation presents to regional and international stability,

Expressing its profound indignation at the death of more than 17,000 children and the many more injured since the beginning of the peaceful protests in March 2011, and at all grave violations and abuses committed against children in contravention of applicable international law, such as their recruitment and use, killing and maiming, sexual violence, sexual exploitation and abuse, kidnapping and abductions, attacks on schools and hospitals, and denial of humanitarian access, as well as their arbitrary arrest, detention, torture and ill-treatment and their use as human shields, and noting the ongoing work of the Security Council Working Group on Children and Armed Conflict in the Syrian Arab Republic,

Recalling with serious concern the findings of the Commission of Inquiry in its report entitled "Out of sight, out of mind: deaths in detention in the Syrian Arab Republic", noting in this regard the issuing of death notifications of detained individuals by the Syrian regime, which provides further indication of systematic violations of international human rights law and international humanitarian law, and urging the regime to provide families with the remains of their relatives whose fate has been disclosed, including those who have been summarily executed, to take all appropriate measures immediately to protect the lives and rights of all persons currently detained or unaccounted for, and to clarify the fate of those who remain missing or are still in custody in accordance with Security Council resolution 2474 (2019) of 11 June 2019,

Expressing its deep appreciation for the significant efforts that have been made by neighbouring countries and other countries in the region to accommodate Syrians, while acknowledging the increasing financial, socioeconomic and political impact of the presence of large-scale refugee and displaced populations in those countries,

Welcoming the efforts of the United Nations and the League of Arab States and all diplomatic efforts to achieve a political solution to the Syrian crisis based on the final communiqué of the Action Group for Syria of 30 June 2012[30] and consistent with Security Council resolution 2254 (2015),

Expressing full support for the efforts of the Special Envoy of the Secretary-General for Syria, with a view to the protection of the civilian population and the full implementation of the Syrian political process that establishes credible, inclusive and non-sectarian governance in accordance with the final communiqué and consistent with Security Council resolutions 2254 (2015) and 2258 (2015), urging Syrian parties to engage constructively with the Constitutional Committee in order to pave the way for the negotiation of a genuine political transition, noting with appreciation the mediation efforts to facilitate the establishment of a ceasefire in the Syrian Arab Republic, as noted by the Security Council in its resolution 2336 (2016), and supporting the efforts to end violence, while expressing deep concern at the violations, demanding that all parties to the ceasefire in the Syrian Arab Republic respect their commitments, and urging all Member States, especially the members of the International Syria Support Group, to use their influence to ensure respect for

those commitments and the full implementation of those resolutions, to support efforts to create conditions for a durable and lasting ceasefire, which is essential to achieving a political solution to the conflict in the Syrian Arab Republic, and to bring to an end the systematic, widespread and gross violations and abuses of human rights and violations of international humanitarian law,

1. *Strongly condemns* the systematic, widespread and gross violations and abuses of international human rights law and violations of international humanitarian law committed in the Syrian Arab Republic and the indiscriminate and disproportionate attacks in civilian areas and against civilian infrastructure, in particular attacks on medical facilities and schools, which continue to claim civilian lives, and demands that all parties comply with their obligations under international humanitarian law;

2. *Deplores and condemns in the strongest terms* the continued armed violence by the Syrian regime against its own people since the beginning of the peaceful protests in 2011, and demands that the Syrian regime immediately put an end to all attacks against civilians, take all feasible precautions to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects and meet its responsibilities to protect the Syrian population and immediately implement Security Council resolutions 2254 (2015), 2258 (2015) and 2286 (2016);

3. *Urges* all Member States, especially the members of the International Syria Support Group, to create conditions for continued negotiations for a political solution to the Syrian conflict, under the auspices of the United Nations, by working towards the nationwide ceasefire, to enable full, immediate and safe humanitarian access and to lead to the release of those arbitrarily detained and ensure the assessment of the number of people who remain in prisons, consistent with Security Council resolution 2254 (2015), as only a durable and inclusive political solution to the conflict can bring an end to the systematic, widespread and gross violations and abuses of international human rights law and violations of international humanitarian law;

4. *Strongly condemns* any use of chemical weapons, such as chlorine, sarin and sulfur mustard, by any party to the conflict in the Syrian Arab Republic, emphasizes that the development, production, acquisition, stockpiling, retention, transfer or use of chemical weapons anywhere, at any time, by anyone, under any circumstances, is unacceptable, constitutes one of the most serious crimes under international law, and is a violation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction[38] and Security Council resolution 2118 (2013), and expresses its strong conviction that individuals responsible for the development, production, acquisition, stockpiling, retention, transfer or use of chemical weapons must and should be held accountable;

5. *Also strongly condemns* the continued use of chemical weapons in the Syrian Arab Republic, in particular the chlorine attack on 4 February 2018 in Saraqib, the attack on 7 April 2018 in Duma and the chlorine attack on 19 May 2019 on Latakia Province, which killed dozens of men, women and children and severely injured hundreds more, recalls the decision of the Security Council that the Syrian Arab Republic shall not use, develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to other States or non-State actors, recalls the relevant reports of the Organisation for the Prohibition of Chemical Weapons-United Nations Joint Investigative Mechanism, and demands that the Syrian regime and so-called ISIL (also known as Da'esh) immediately desist from any further use of chemical weapons;

[38] United Nations, *Treaty Series*, vol. 1974, No. 33757.

6. *Expresses grave concern* at the chemical weapons attack in Duma on 7 April 2018, and notes the report of the Independent International Commission of Inquiry on the Syrian Arab Republic that a vast body of evidence suggested that chlorine had been dropped by helicopter on a residential building, as well as the report of the fact-finding mission of the Organisation for the Prohibition of Chemical Weapons on that attack,[35] in which it was stated that the evaluation and analysis of all the information gathered by the mission provided reasonable grounds to believe that the use of a toxic chemical as a weapon had taken place;

7. *Calls for* a significant enhancement of the verification measures of the Organisation for the Prohibition of Chemical Weapons, welcomes the establishment and operationalization of the Investigation and Identification Team of the Organisation, which is authorized to identify the perpetrators of the use of chemical weapons, looks forward to the first report to be issued by the Team, which will be an important first step towards the ultimate goal of bringing the perpetrators of the use of chemical weapons to justice, and in this regard also welcomes the memorandum of understanding concluded between the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 and the Organisation for the Prohibition of Chemical Weapons;

8. *Welcomes* the issuance of the Secretary-General's bulletin on the records and archives of the Organisation for the Prohibition of Chemical Weapons-United Nations Joint Investigative Mechanism,[39] and calls upon the Secretary-General to ensure that the relevant materials are processed expeditiously to be shared with the International, Impartial and Independent Mechanism without any further delays;

9. *Demands* that the Syrian regime adhere fully to its international obligations, including the requirement that it declare in full its chemical weapons programme, with special emphasis on the need for the Syrian Arab Republic to urgently resolve the verified gaps, inconsistencies and discrepancies pertaining to its declaration in respect of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction and to eliminate its chemical weapons programme in its entirety, as referred to in the report of the Director General of the Organisation for the Prohibition of Chemical Weapons dated 22 February 2016[40] indicating that the Technical Secretariat is at present unable to verify fully that the declaration and related submissions of the Syrian Arab Republic are accurate and complete, as required by the Convention and decision EC-M-33/DEC.1 of the Executive Council of the Organisation for the Prohibition of Chemical Weapons;[41]

10. *Requests* additional procedures for stringent verification pursuant to article IV, paragraph 8, and article V, paragraph 10, of the Convention, in order to ensure the complete destruction of the Syrian chemical weapons programme and prevent any further use of chemical weapons;

11. *Deplores and condemns in the strongest terms* the continued widespread and systematic gross violations and abuses of human rights and fundamental freedoms and all violations of international humanitarian law by the Syrian regime, the government-affiliated militias and those who fight on their behalf, including those deliberately targeting civilians or civilian objects, including attacks on schools, hospitals and places of worship, with heavy weapons, aerial bombardments, cluster munitions, ballistic missiles, barrel bombs, chemical or other weapons and other force

[39] ST/SGB/2019/4.
[40] EC-81/HP/DG.1.
[41] Security Council resolution 2118 (2013), annex I.

against civilians, as well as the starvation of the civilian population as a method of warfare, attacks on schools, hospitals and places of worship, massacres, arbitrary executions, extrajudicial killings, the killing and persecution of peaceful protesters, human rights defenders and journalists, individuals and members of communities on the basis of their religion or belief, arbitrary detention, enforced disappearances, violations of human rights, including those of women and children, forced displacement of members of minority groups and of those opposed to the Syrian regime, unlawful interference with access to medical treatment, failure to respect and protect medical personnel, torture, systematic sexual and gender-based violence, including rape in detention, and ill-treatment;

12. *Condemns unequivocally* all attacks and violence against journalists and media workers by the Syrian regime, the government-affiliated militias and non-State armed groups, urges all parties to respect the professional independence and rights of journalists, and recalls in this regard that journalists and media workers engaged in dangerous professional missions in areas of armed conflict shall be considered civilians and shall be protected as such, provided that they take no action adversely affecting their status as civilians;

13. *Strongly condemns* all violations and abuses of human rights and all violations of international humanitarian law, including the killing and persecution of individuals and members of communities on the basis of their religion or belief, by armed extremist groups, as well as any human rights abuses or violations of international humanitarian law by non-State armed groups, including Hizbullah and those designated as terrorist groups by the Security Council;

14. *Deplores and strongly condemns* the terrorist acts and violence committed against civilians by so-called ISIL (also known as Da'esh), the Nusrah Front (also known as Hay'at Tahrir al-Sham), Al-Qaida-affiliated terrorist groups, terrorist groups designated by the Security Council and other violent extremist groups and their continued gross, systematic and widespread abuses of human rights and violations of international humanitarian law, and reaffirms that terrorism cannot and should not be associated with any religion, gender, ethnicity, nationality or civilization;

15. *Condemns in the strongest terms* the gross and systematic abuse of women's and children's rights by all terrorist groups and armed groups, including so-called ISIL (also known as Da'esh), in particular the killing of women and girls, sexual and gender-based violence, including the enslavement and sexual exploitation and abuse of women and girls and the forced recruitment, use and abduction of children;

16. *Condemns* the reported forced displacements of the population in the Syrian Arab Republic, including forced displacement of civilians as a result of local truce agreements, as highlighted by the Commission of Inquiry, and the alarming impact thereof on the demography of the country, which amounts to a strategy of radical demographic change initiated by the Syrian regime, its allies and other non-State actors, calls upon all parties concerned to cease immediately all activities related to these actions, including any activities that may amount to war crimes and crimes against humanity, notes that impunity for such crimes is unacceptable, reaffirms that those responsible for such breaches of international law, must be brought to justice, and supports efforts to collect evidence in view of future legal action;

17. *Emphasizes* the importance of creating conditions conducive to voluntary, safe, dignified and informed movements of internally displaced persons within the Syrian Arab Republic, and strongly urges all parties to work with the United Nations to ensure that any such movements are in line with the Guiding Principles on Internal

Displacement,[42] and that displaced persons receive the information they need to make informed and voluntary decisions about their movement and safety;

18. *Reminds* the Government of the Syrian Arab Republic of its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[43] including its obligation to take effective measures to prevent acts of torture in any territory under its jurisdiction, and calls upon all States parties to the Convention to comply with any relevant obligations under the Convention, including with respect to the principle of extradite or prosecute contained in article 7 of the Convention;

19. *Encourages* the Special Rapporteur on the human rights of internally displaced persons and the Office of the United Nations High Commissioner for Refugees to remain seized of the urgent human rights and humanitarian situation of internally displaced persons in the Syrian Arab Republic, with a view to helping Member States, the United Nations, including the High-level Panel on Internal Displacement established by the Secretary General, and other humanitarian and human rights actors to improve their responses to internal displacement in the Syrian Arab Republic, with a focus on identifying durable solutions for displaced persons, reducing the significant gap between needs and available resources, improving the collection and coordination of data on displacement, including on displaced children, and providing more effective assistance through well-planned programmes;

20. *Strongly condemns* the reported persistent and widespread use of sexual violence, abuse and exploitation, including in government detention centres, including those run by the intelligence agencies, and notes that such acts may constitute violations of international humanitarian law and violations and abuses of international human rights law, and in this regard expresses deep concern at the prevailing climate of impunity for sexual and gender-based violence;

21. *Also strongly condemns* all violations and abuses committed against children in contravention of applicable international law, such as their recruitment and use, killing and maiming, rape and all other forms of sexual violence, abductions, denial of humanitarian access for children, and attacks on civilian objects, including schools and hospitals, as well as their arbitrary arrest, unlawful detention, torture and ill-treatment and their use as human shields;

22. *Reaffirms* the Syrian regime's responsibility for the systematic use of enforced disappearances, takes note of the assessment of the Commission of Inquiry that the Syrian regime's use of enforced disappearances amounts to a crime against humanity, and condemns the targeted disappearances of young men and the exploitation of ceasefires as an opportunity to forcibly recruit and arbitrarily detain them;

23. *Demands* that the Syrian regime, in accordance with its obligations under relevant provisions of international human rights law, including the right to life and the right to the enjoyment of the highest attainable standard of physical and mental health, promote non-discriminatory access to health services and respect and protect medical and health personnel from obstruction, threats and physical attacks;

24. *Strongly condemns* all attacks on medical and health personnel, their means of transport and equipment, as well as on hospitals and other medical facilities, deplores the long-term consequences of such attacks for the population and health-care systems of the Syrian Arab Republic, and reaffirms that humanitarian workers and their means of transport, equipment and facilities must be protected in accordance with international humanitarian law;

[42] E/CN.4/1998/53/Add.2, annex.

[43] United Nations, *Treaty Series*, vol. 1465, No. 24841.

25. *Urges* all parties to the conflict to develop effective measures to prevent acts of violence, attacks and threats of attacks against sick and wounded persons, internally displaced persons, as well as medical personnel and humanitarian personnel exclusively engaged in medical duties, hospitals and other medical facilities, including through the conduct of full, prompt, impartial and effective investigations to hold those responsible for any such acts to account;

26. *Expresses its profound concern* about the findings contained in the report of the Commission of Inquiry regarding the displacement of more than half of the 2.5 million people residing in Idlib who have been displaced since the onset of conflict, often multiple times, stresses that the situation in Idlib is of particular concern, expresses its support for the current agreement to cease hostilities in order to avoid a further humanitarian catastrophe, and calls upon the guarantors of that agreement to ensure that the ceasefire is upheld and that access is granted in a rapid, unimpeded and sustainable manner;

27. *Demands* that the Syrian regime cooperate fully with the Commission of Inquiry, including by granting it immediate, full and unhindered access throughout the Syrian Arab Republic;

28. *Strongly condemns* the intervention in the Syrian Arab Republic of all foreign terrorist fighters and those foreign organizations and foreign forces fighting on behalf of the Syrian regime, expresses deep concern that their involvement further exacerbates the deteriorating situation in the Syrian Arab Republic, including the human rights and humanitarian situation, which has a serious negative impact on the region, and further demands that all foreign terrorist fighters, and those who are fighting in support of the Syrian regime, including all militias sponsored by foreign Governments, must immediately withdraw from the Syrian Arab Republic;

29. *Demands* that all parties immediately put an end to all violations and abuses of international human rights law and violations of international humanitarian law, recalls, in particular, the obligation under international humanitarian law to distinguish between civilians and combatants and the prohibition against indiscriminate and disproportionate attacks and all attacks against civilians and civilian objects, further demands that all parties to the conflict take all appropriate steps to protect civilians, in compliance with international law, including by desisting from attacks directed against civilian objects, such as medical centres, schools and water stations, and refrain from militarizing such facilities, seek to avoid establishing military positions in densely populated areas and enable the evacuation of the wounded and all civilians who wish to leave areas of conflict, including besieged areas, and recalls in this regard that the Syrian regime bears primary responsibility for protecting its population;

30. *Condemns in the strongest terms* all attacks on protected objects, including indiscriminate and disproportionate attacks and those which may constitute a war crime, taking place in the Syrian Arab Republic, and requests the Commission of Inquiry to continue to investigate all such acts, and demands that the Syrian regime meet its responsibility to protect the Syrian population;

31. *Demands* that the Syrian regime immediately cease any attacks on civilians, any disproportionate attacks and any indiscriminate use of weapons in populated areas, and recalls in this regard the obligation to respect international humanitarian law in all circumstances;

32. *Emphasizes* the need for accountability for crimes involving breaches of international law, in particular of international humanitarian law and human rights law, some of which may constitute war crimes or crimes against humanity, committed

in the Syrian Arab Republic since March 2011, through fair and independent investigations and prosecutions at the domestic or international level;

33. *Urges* all Member States and, in particular, parties to the conflict to cooperate fully with the International, Impartial and Independent Mechanism, including through the provision of relevant information and documentation, stresses its mandate to closely cooperate with the Commission of Inquiry, also urges the Mechanism to make a particular effort to ensure consultation and cooperation with Syrian civil society organizations by concluding cooperation frameworks, and requests the United Nations system as a whole to enhance cooperation with the Mechanism and to promptly respond to any request, including access to all information and documentation, in accordance with General Assembly resolution 71/248;

34. *Welcomes* the inclusion of the full funding for the International, Impartial and Independent Mechanism in the budget proposal of the Secretary-General for 2020, in accordance with General Assembly resolution 73/182, and emphasizes the need to fully implement its previous decisions on the funding of the Mechanism in order to ensure that the Mechanism can operate at its full capacity as soon as possible;

35. *Emphasizes* the need to ensure that all those responsible for violations of international humanitarian law or violations and abuses of human rights law are held to account through appropriate, fair and independent domestic or international criminal justice mechanisms, in accordance with the principle of complementarity, stresses the need to pursue practical steps towards this goal, and for that reason encourages the Security Council to take appropriate action to ensure accountability, noting the important role that the International Criminal Court can play in this regard;

36. *Welcomes* the efforts by States to investigate conduct in the Syrian Arab Republic and to prosecute crimes within their jurisdiction committed in the Syrian Arab Republic, encourages them to continue to do so and to share relevant information between States in accordance with their national legislation and international law, and also encourages other States to consider doing the same;

37. *Urgently requests* the convening of a high-level panel discussion, funded by voluntary contributions, led by the Office of the United Nations High Commissioner of Human Rights, the Commission of Inquiry and Syrian civil society to brief the General Assembly at its seventy-fifth session on the situation of human rights in the Syrian Arab Republic, and encourages United Nations monitoring and reporting to help this panel to further document violations of international humanitarian law and violations and abuses of human rights, including those that may amount to crimes against humanity and war crimes, to provide recommendations to facilitate improvements in civilian protection and accountability measures, and to feature witness testimony of Syrian human rights defenders and other Syrian voices through appropriate and safe means;

38. *Deplores* the deteriorating humanitarian situation in the Syrian Arab Republic, and urges the international community to assume its responsibility for providing urgent financial support to enable the host countries and communities to respond to the growing humanitarian needs of Syrian refugees, while emphasizing the principle of burden-sharing;

39. *Calls upon* all members of the international community, including all donors, to fulfil their previous pledges and continue to provide much-needed support to the United Nations, its specialized agencies and other humanitarian actors to provide humanitarian assistance to the millions of Syrians who are in need, including those displaced both internally and in host countries and communities;

40. *Welcomes* the efforts of those countries outside the region that have put in place measures and policies to assist and host Syrian refugees, encourages them to do

more, also encourages other States outside the region to consider implementing similar measures and policies, with a view to providing Syrian refugees with protection and humanitarian assistance, and acknowledges the need to improve the conditions on the ground to facilitate the return of refugees in a safe, voluntary and dignified manner to their place of origin or choice;

41. *Strongly condemns* the intentional denial of humanitarian assistance to civilians, from whatever quarter, and in particular the denial of medical assistance and the withdrawal of water and sanitation services to civilian areas, which has recently worsened, stressing that the starvation of civilians as a method of warfare is prohibited under international law, and noting especially the primary responsibility of the Government of the Syrian Arab Republic in this regard;

42. *Demands* that the Syrian regime and all other parties to the conflict ensure the full, immediate, unimpeded and sustained access of the United Nations and humanitarian actors, including to besieged and hard-to-reach areas such as Rukban, from Damascus, that the Syrian regime cease to impede the ability of the United Nations and humanitarian actors to move through the north-east of the Syrian Arab Republic and beyond, and that all parties to the conflict preserve the Faysh Khabur border crossing and allow sustained deliveries of humanitarian assistance to persons in need across the Syrian Arab Republic, including through commercial routes, consistent with Security Council resolutions 2139 (2014), 2165 (2014), 2191 (2014), 2254 (2015), 2258 (2015), 2332 (2016), 2393 (2017), 2401 (2018) and 2449 (2018);

43. *Strongly condemns* practices including abduction, hostage-taking, arbitrary and incommunicado detention, torture, the murder of innocent civilians and summary executions carried out by non-State armed groups and terrorist groups designated by the Security Council, most notably so-called ISIL (also known as Da'esh) and the Nusrah Front (also known as Hay'at Tahrir al-Sham), and underlines that such acts may amount to crimes against humanity;

44. *Deplores* the suffering and torture in detention centres throughout the Syrian Arab Republic, as depicted in the reports of the Commission of Inquiry and the Office of the United Nations High Commissioner for Human Rights, as well as in the evidence presented by "Caesar" in January 2014, and in the reports of widespread killing of detainees by Syrian military intelligence;

45. *Strongly condemns* the reported killing of detainees in Syrian military intelligence facilities, and calls upon the Syrian regime to release all unlawfully held detainees, including women, children and the elderly, and to facilitate information about those who died while in detention by the Syrian regime, as and return their remains, with full transparency regarding what happened to these individuals;

46. *Calls for* the appropriate international monitoring bodies to be granted access to detainees in government prisons and detention centres, including all military facilities referred to in the reports of the Commission of Inquiry;

47. *Demands* that all parties take all appropriate steps to protect civilians and persons hors de combat, including persons belonging to national or ethnic, religious and linguistic minorities, and stresses that, in this regard, the primary responsibility to protect the population lies with the Syrian regime;

48. *Strongly condemns* the damage and destruction of the cultural heritage of the Syrian Arab Republic, in particular that of Palmyra and Aleppo, and the organized looting and trafficking of Syrian cultural property, as outlined by the Security Council in its resolutions 2199 (2015) of 12 February 2015 and 2347 (2017) of 24 March 2017, affirms that attacks intentionally directed against historic monuments may amount to war crimes, and underlines the need to bring the perpetrators of such crimes to justice;

49. *Notes with concern* the recent escalation of violence in the north-east of the Syrian Arab Republic, which has seriously undermined the stability and security of the whole region, with a risk of further undermining the political process, eroded progress in the fight against ISIL (also known as Da'esh), worsened the humanitarian situation and led to additional widespread displacement, and further emphasizes that any attempt to bring about demographic change in the region would be unacceptable;

50. *Stresses* the situation of particular concern in the northern part of the province of Aleppo, as well as Idlib, strongly condemns the attacks on civilians and first responders and civilian infrastructure where ongoing violence, including airstrikes, continues to cause death and injury among civilians and first responders, as well as devastating damage to civilian infrastructure, including health-care and educational facilities, and welcomes the establishment of the United Nations board of inquiry mandated to investigate the destruction of and damage to facilities on the United Nations deconfliction list and United Nations-supported facilities;

51. *Urges* all parties to the conflict to take all appropriate steps to ensure the safety and security of United Nations and associated personnel, personnel of the specialized agencies and all other personnel engaged in humanitarian relief activities, including national and locally recruited personnel, as required by international humanitarian law, without prejudice to their freedom of movement and access, stresses the need not to impede or hinder these efforts, recalls that attacks on humanitarian workers may amount to war crimes, and notes in this regard that the Security Council has reaffirmed that it will take further measures in the event of non-compliance with its resolutions 2139 (2014), 2165 (2014), 2191 (2014), 2234 (2015), 2258 (2015), 2286 (2016), 2393 (2017), 2401 (2018) and 2449 (2018) by any Syrian party;

52. *Urges* the international community to support the leadership and full, effective and meaningful participation of women in all efforts aimed at finding a political solution to the Syrian crisis, as envisaged by the Security Council in its resolutions 1325 (2000), 2122 (2013) of 18 October 2013 and 2242 (2015) of 13 October 2015;

53. *Reaffirms* that there can only be a political solution to the conflict in the Syrian Arab Republic, reiterates its commitment to the national unity and territorial integrity of the Syrian Arab Republic, and urges the parties to the conflict to abstain from actions that may contribute to the continuing deterioration of the human rights, security and humanitarian situation, in order to reach a genuine political transition, based on the final communiqué of the Action Group for Syria of 30 June 2012,[30] consistent with Security Council resolutions 2254 (2015) and 2268 (2016), that meets the legitimate aspirations of the Syrian people for a civil, democratic and pluralistic State, with the full and effective participation of women, where there is no room for sectarianism or discrimination on ethnic, religious, linguistic, gender or any other grounds, and where all persons receive equal protection, regardless of gender, religion or ethnicity, and further demands that all parties work urgently towards the comprehensive implementation of the final communiqué, including through the establishment of an inclusive transitional governing body with full executive powers, which shall be formed on the basis of mutual consent while ensuring the continuity of governmental institutions.

50th plenary meeting
18 December 2019

Annex 85

Voting record on UNGA resolution 74/169

Available at:

https://digitallibrary.un.org/record/3840118

Situation of human rights in the Syrian Arab Republic : resolution / adopted by the General Assembly

2019

Formats

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Details

Title
Situation of human rights in the Syrian Arab Republic : resolution / adopted by the General Assembly

Agenda
A/74/251 70c Human rights situations and reports of special rapporteurs and representatives. HUMAN RIGHTS--REPORTS (https://digitallibrary.un.org/search?f1=9911_0&as=1&sf=title&so=a&rm=&m1=e&p1=%28DHLAUTH%29898323&ln=en)
A/74/251 70c[9] HUMAN RIGHTS--SYRIAN ARAB REPUBLIC (https://digitallibrary.un.org/search?f1=9911_0&as=1&sf=title&so=a&rm=&m1=e&p1=%28DHLAUTH%29898333&ln=en)

Resolution
A/RES/74/169 (https://digitallibrary.un.org/record/3893546?ln=en)

Meeting record
A/74/PV.50 (https://digitallibrary.un.org/record/3855503?ln=en)

Draft resolution
A/C.3/74/L.30/Rev.1 (https://digitallibrary.un.org/record/3835160?ln=en)

Committee report
A/74/399/Add.3 (https://digitallibrary.un.org/record/3837396?ln=en)

Note
RECORDED - No machine generated vote

Vote summary

Voting Summary

Yes: 106 | No: 15 | Abstentions: 57 | Non-Voting: 15 | Total voting membership: 193

Vote date

2019-12-18

Vote

A AFGHANISTAN
Y ALBANIA
N ALGERIA
Y ANDORRA
A ANGOLA
Y ANTIGUA AND BARBUDA
Y ARGENTINA
A ARMENIA
Y AUSTRALIA
Y AUSTRIA
AZERBAIJAN
Y BAHAMAS
Y BAHRAIN
A BANGLADESH
Y BARBADOS
N BELARUS
Y BELGIUM
A BELIZE
Y BENIN
A BHUTAN
BOLIVIA (PLURINATIONAL STATE OF)
A BOSNIA AND HERZEGOVINA
Y BOTSWANA
Y BRAZIL
A BRUNEI DARUSSALAM
Y BULGARIA
Y BURKINA FASO
N BURUNDI
Y CABO VERDE
CAMBODIA
A CAMEROON
Y CANADA
A CENTRAL AFRICAN REPUBLIC
A CHAD
Y CHILE
N CHINA
Y COLOMBIA
Y COMOROS
CONGO
Y COSTA RICA
A COTE D'IVOIRE
Y CROATIA
N CUBA
Y CYPRUS
Y CZECHIA

N DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA
DEMOCRATIC REPUBLIC OF THE CONGO
Y DENMARK
Y DJIBOUTI
DOMINICA
Y DOMINICAN REPUBLIC
Y ECUADOR
A EGYPT
Y EL SALVADOR
EQUATORIAL GUINEA
A ERITREA
Y ESTONIA
ESWATINI
A ETHIOPIA
A FIJI
Y FINLAND
Y FRANCE
A GABON
Y GAMBIA
Y GEORGIA
Y GERMANY
A GHANA
Y GREECE
A GRENADA
Y GUATEMALA
A GUINEA
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A KAZAKHSTAN
A KENYA
Y KIRIBATI
Y KUWAIT
A KYRGYZSTAN
A LAO PEOPLE'S DEMOCRATIC REPUBLIC
Y LATVIA
A LEBANON
A LESOTHO
Y LIBERIA

LIBYA
Y LIECHTENSTEIN
Y LITHUANIA
Y LUXEMBOURG
A MADAGASCAR
Y MALAWI
A MALAYSIA
Y MALDIVES
A MALI
Y MALTA
Y MARSHALL ISLANDS
N MAURITANIA
A MAURITIUS
Y MEXICO
Y MICRONESIA (FEDERATED STATES OF)
Y MONACO
A MONGOLIA
Y MONTENEGRO
Y MOROCCO
A MOZAMBIQUE
MYANMAR
A NAMIBIA
Y NAURU
A NEPAL
Y NETHERLANDS
Y NEW ZEALAND
N NICARAGUA
NIGER
Y NIGERIA
Y NORTH MACEDONIA
Y NORWAY
A OMAN
A PAKISTAN
Y PALAU
Y PANAMA
Y PAPUA NEW GUINEA
A PARAGUAY
Y PERU
A PHILIPPINES
Y POLAND
Y PORTUGAL
Y QATAR
Y REPUBLIC OF KOREA
Y REPUBLIC OF MOLDOVA
Y ROMANIA
N RUSSIAN FEDERATION
A RWANDA
Y SAINT KITTS AND NEVIS
Y SAINT LUCIA
A SAINT VINCENT AND THE GRENADINES
Y SAMOA
Y SAN MARINO

Y SAO TOME AND PRINCIPE
Y SAUDI ARABIA
Y SENEGAL
SERBIA
Y SEYCHELLES
A SIERRA LEONE
A SINGAPORE
Y SLOVAKIA
Y SLOVENIA
SOLOMON ISLANDS
Y SOMALIA
A SOUTH AFRICA
SOUTH SUDAN
Y SPAIN
A SRI LANKA
A SUDAN
A SURINAME
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A UGANDA
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Y UNITED KINGDOM
A UNITED REPUBLIC OF TANZANIA
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N UZBEKISTAN
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Annex 86

UNGA, resolution 74/246, Situation of human rights of Rohingya Muslims and other minorities in Myanmar, UN doc. A/RES/74/246, 27 December 2019

Available at:

http://undocs.org/A/RES/74/246

French version available at:

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United Nations A/RES/74/246

General Assembly

Distr.: General
15 January 2020

Seventy-fourth session
Agenda item 70 (c)
Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Resolution adopted by the General Assembly on 27 December 2019

[*on the report of the Third Committee (A/74/399/Add.3)*]

74/246. Situation of human rights of Rohingya Muslims and other minorities in Myanmar

The General Assembly,

Guided by the Charter of the United Nations and the Universal Declaration of Human Rights,[1] the International Covenants on Human Rights[2] and other relevant international law and human rights law instruments,

Reaffirming its previous resolutions on the situation of human rights in Myanmar, the most recent of which being resolutions 73/264 of 22 December 2018 and 72/248 of 24 December 2017, and recalling the resolutions and decisions of the Human Rights Council, the most recent of which being resolutions 42/3 of 26 September 2019,[3] 39/2 of 27 September 2018,[4] 37/32 of 23 March 2018[5] and S-27/1 of 5 December 2017,[6] and the presidential statement issued by the Security Council on 6 November 2017,[7] as well as Security Council resolution 2467 (2019) of 23 April 2019,

Welcoming the work and the reports of the Special Rapporteur on the situation of human rights in Myanmar, while deeply regretting the decision of the Government

[1] Resolution 217 A (III).
[2] Resolution 2200 A (XXI).
[3] *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 53A* (A/74/53/Add.1), chap. II.
[4] Ibid., *Seventy-third Session, Supplement No. 53A* (A/73/53/Add.1), chap. II.
[5] Ibid., *Supplement No. 53* (A/73/53), chap. IV, sect. A.
[6] Ibid., chap. III.
[7] S/PRST/2017/22.

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of Myanmar to discontinue cooperation with the Special Rapporteur and to deny her access to the country since January 2018,

Welcoming also the work of the Special Envoy of the Secretary-General on Myanmar, and encouraging her further engagement and dialogue with the Government of Myanmar and other relevant stakeholders and affected populations,

Welcoming further the first report to the General Assembly of the ongoing independent mechanism established by the Human Rights Council in its resolution 39/2,[8] and its operationalization, as well as the appointment of its head,

Welcoming the work of the independent international fact-finding mission on Myanmar, including its final report[9] and all its other reports, including the reports on the economic interests of the Myanmar military and on sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, and furthermore deeply regretting that the Government of Myanmar did not cooperate with the fact-finding mission,

Recognizing the complementary and mutually reinforcing work of the various United Nations mandate holders and mechanisms working on Myanmar to improve the situation of human rights in Myanmar,

Noting the importance of the role of regional organizations in efforts to achieve pacific settlement of local disputes, as stipulated in Chapter VIII of the Charter, while noting that such efforts do not preclude action under Chapter VI of the Charter,

Acknowledging the efforts of the Organization of Islamic Cooperation, alongside relevant international efforts, aimed at bringing peace and stability to Rakhine State, including through the appointment by the Organization of a new special envoy to Myanmar,

Welcoming the report of the Secretary-General,[10]

Condemning all violations and abuses of human rights in Myanmar, including against Rohingya Muslims and other minorities in Rakhine, Kachin and Shan States, and expressing deep concern at the reports of ongoing human rights violations, as also noted by the United Nations High Commissioner for Human Rights in her oral update on 10 July 2019, as well as at the ongoing non-cooperation of the Government of Myanmar and the denial of access to United Nations mechanisms, including the Special Rapporteur on the situation of human rights in Myanmar and the Independent Mechanism,

Continuing to underline the need for the security and armed forces of Myanmar to cease all actions that run counter to the protection of all persons within the country, including those belonging to the Rohingya community, by respecting international law, including international human rights law and international humanitarian law, and ending the violence, including sexual violence, and calling for urgent steps to ensure justice in respect of all human rights violations and violations of international humanitarian law so that those displaced by violence are able to voluntarily return in safety and dignity to their places of origin or to a place of their choice in a sustainable manner,

Calling for an immediate cessation of fighting and hostilities, of targeting of civilians and of all violations and abuses of international human rights law and international humanitarian law in northern Myanmar, and recognizing the need for

[8] See A/74/278.
[9] A/HRC/42/50.
[10] A/74/311.

continued de-escalation and an enduring ceasefire, best achieved by dialogue between all parties, as a necessary means of improving the human rights situation,

Reiterating its grave concern that, in spite of the fact that Rohingya Muslims lived in Myanmar for generations prior to the independence of Myanmar, they were made stateless by the enactment of the 1982 Citizenship Law and were eventually disenfranchised, in 2015, from the electoral process,

Reaffirming that the denial of citizenship status and related rights to Rohingya Muslims and others, including voting rights, is a serious human rights concern,

Reiterating its deep distress at reports that unarmed individuals in Rakhine State have been and continue to be subjected to the excessive use of force and violations of human rights and international humanitarian law by the military and security and armed forces, including extrajudicial, summary or arbitrary killings, systematic rape and other forms of sexual and gender-based violence, arbitrary detention, enforced disappearance and government seizure of Rohingya lands from which Rohingya Muslims were evicted and their homes destroyed, and remaining concerned by the previous large-scale destruction of homes and systematic evictions in northern Rakhine State, including the use of arson and violence, as well as the unlawful use of force by non-State actors,

Recalling the responsibility of States to comply with their relevant obligations, to prosecute those responsible for violations of international law, including international humanitarian law, international human rights law, international criminal law and international refugee law, as well as abuses of human rights, and to provide an effective remedy to any person whose rights have been violated, with a view to ending impunity,

Reiterating the urgent need to ensure that all those responsible for crimes related to violations and abuses of international law throughout Myanmar, including international human rights law, international humanitarian law and international criminal law, are held to account through credible and independent national, regional or international justice mechanisms, while recalling the authority of the Security Council in this regard,

Recalling the establishment of an independent commission of inquiry by the Government of Myanmar on 30 July 2018 with a view to ensuring accountability for the human rights violations and abuses committed in Rakhine State, reiterating that the commission should conduct its work with independence, impartiality, transparency and objectivity, and encouraging the commission to issue an initial report and to cooperate with all relevant United Nations mandate holders,

Recalling also some steps taken by the Government of Myanmar to create the conditions necessary for refugees and other forcibly displaced persons to return to their places of origin or to a place of their choice voluntarily, in safety and dignity, but regretting, however, that the situation has not improved in Rakhine State to create the conditions necessary for refugees and other forcibly displaced persons to return to their places of origin voluntarily, safely and with dignity,

Expressing concern that in northern Rakhine State, the implementation of policies under the guise of economic development and reconstruction by the Government of Myanmar and the heavy militarization of the area have resulted in the alteration of the demographic structure, which further prevents the members of the displaced Rohingya Muslim population from returning to Rakhine State,

Re-emphasizing the right of all refugees and the importance of internally displaced persons being able to return home in safety and dignity and in a voluntary and sustainable manner,

Noting the extension for one year of the memorandum of understanding between Myanmar and the United Nations Development Programme and the Office of the United Nations High Commissioner for Refugees on assistance in the repatriation process of displaced persons from Rakhine State, and calling upon Myanmar to grant United Nations agencies unfettered access to northern Rakhine State so that they can carry out this assistance,

Expressing deep concern at the continued armed conflict and violence and abuses in a number of areas in Myanmar affecting tens of thousands of people, most notably in Rakhine State, causing their forced displacement, and recognizing the need for continued de-escalation and an enduring ceasefire as a necessary means of improving the human rights situation,

Alarmed by the continued influx to Bangladesh over the last four decades of 1.1 million Rohingya Muslims, including the 744,000 who arrived since 25 August 2017 in the aftermath of atrocities committed by the security and armed forces of Myanmar,

Expressing deep concern over the virulent and rapid spread of false news, hate speech and inflammatory rhetoric, in particular through social media, tolerated by the authorities of Myanmar,

Noting the steps taken by the Government of Myanmar towards establishing a national strategy for the sustainable closure of camps for internally displaced persons in Myanmar,

Alarmed by the findings of the independent international fact-finding mission on Myanmar of evidence of gross human rights violations and abuses suffered by Rohingya Muslims and other minorities, perpetrated by the security and armed forces of Myanmar, which, according to the fact-finding mission, undoubtedly amount to the gravest crimes under international law,

Underlining the urgency of the call by the Secretary-General for increased efforts to implement the recommendations of the Advisory Commission on Rakhine State, to address the root causes of the crisis, including those on access to citizenship for the Rohingya, freedom of movement, the elimination of systematic segregation and all forms of discrimination, and inclusive and equal access to health services and education, and birth registration, in full consultation with all ethnic and minority groups and persons in vulnerable situations, including on matters of citizenship for Rohingya Muslims,

Welcoming the commitment of the Secretary-General to implementing the recommendations made by the independent inquiry into the involvement of the United Nations in Myanmar from 2010 to 2018,

Reiterating its urgent call upon the Government of Myanmar to sustain the democratic transition of Myanmar by bringing all national institutions, including the military, under the democratically elected civilian Government,

Welcoming the involvement of the Association of Southeast Asian Nations in addressing the situation in Rakhine State, including through carrying out humanitarian assessments in northern Rakhine State through its Coordinating Centre for Humanitarian Assistance on Disaster Management, and recognizing the need for close engagement with the Rohingya refugee community, while encouraging close cooperation with all relevant United Nations agencies and international partners and to address the root causes of the conflict, so that affected communities can rebuild their lives there,

1. *Expresses grave concern* at continuing reports of serious human rights violations and abuses as well as violations of international humanitarian law in

Myanmar against Rohingya Muslims and other minorities in Kachin, Rakhine and Shan States, including those involving arbitrary arrests, deaths in detention, torture and other cruel, inhuman or degrading treatment or punishment, forced labour, deprivation of economic and social rights, the forced displacement of more than a million Rohingya Muslims to Bangladesh, rape, sexual slavery and other forms of sexual and gender-based violence against women and children, as well as restrictions on exercising the rights to freedom of religion or belief, expression and peaceful assembly;

2. *Strongly condemns* all violations and abuses of human rights in Myanmar, and calls upon Myanmar, in particular its security and armed forces, to end immediately all violence and all violations of international law in Myanmar, to ensure the protection of the human rights of all persons in Myanmar, including of Rohingya Muslims and persons belonging to other minorities, and to take all measures necessary to provide justice to victims, to ensure full accountability and to end impunity for all violations and abuses of human rights law and violations of international humanitarian law, starting with a full, transparent and independent investigation into reports of all these violations;

3. *Emphasizes* the importance of conducting international, independent, fair and transparent investigations into the gross human rights violations in Myanmar, including sexual and gender-based violence against women and children, and of holding accountable all those responsible for brutal acts and crimes against all persons, including the Rohingya Muslims, in order to deliver justice to victims using all legal instruments and domestic, regional and international judicial mechanisms;

4. *Expresses grave concern* about the increasing restrictions on humanitarian access, in particular in Rakhine State, and urges the Government of Myanmar to cooperate fully with and to grant full, unrestricted and unmonitored access to all United Nations mandate holders and human rights mechanisms, including the Special Rapporteur on the situation of human rights in Myanmar, the Independent Mechanism and relevant United Nations agencies, and international and regional human rights bodies to independently monitor the situation of human rights, and to ensure that individuals can cooperate without hindrance with these mechanisms and without fear of reprisal, intimidation or attack, and expresses deep concern that international access to affected areas of northern Rakhine State remains severely restricted for the international community, including for United Nations agencies, humanitarian actors and international media;

5. *Calls upon* the United Nations to ensure that the Independent Mechanism is afforded the flexibility that it needs in terms of staffing, location and operational freedom so it can deliver as effectively as possible on its mandate;

6. *Urges* the Independent Mechanism to swiftly advance its work and to ensure the effective use of evidence of the most serious international crimes and violations of international law collected by the independent international fact-finding mission on Myanmar;

7. *Urges* the independent commission of inquiry of Myanmar to deliver tangible results on its work carried out so far with independence, impartiality, transparency and objectivity in order to promote accountability, and to deliver a credible report that acknowledges the human rights violations and mass atrocities committed in Rakhine State and that can lay the groundwork for confidence-building, and encourages the commission to cooperate with all relevant United Nations mandate holders;

8. *Reiterates* the urgent call upon the Government of Myanmar:

(a) To manifest clear political will supported by concrete actions for the safe, dignified, voluntary and sustainable return and reintegration of Rohingya Muslims in Myanmar;

(b) To take the necessary measures to address the spread of discrimination and prejudice and to combat the incitement of hatred against Rohingya Muslims and persons belonging to other minorities, and to publicly condemn such acts and combat hate speech, while fully respecting international human rights law, as well as to promote interfaith dialogue in cooperation with the international community and encourage political and religious leaders in the country to work towards reconciliation among communities and national unity through dialogue;

(c) To expedite efforts to eliminate statelessness and the systematic and institutionalized discrimination against members of ethnic and religious minorities, in particular relating to Rohingya Muslims, by, inter alia, reviewing the 1982 Citizenship Law, which has led to deprivation of human rights, by ensuring equal access to full citizenship through a transparent, voluntary and accessible procedure and to all civil and political rights, by allowing for self-identification, by amending or repealing all discriminatory legislation and policies, including discriminatory provisions of the set of "protection of race and religion laws" enacted in 2015 covering religious conversion, interfaith marriage, monogamy and population control, and by lifting all local orders restricting rights to freedom of movement and access to civil registration, health and education services and livelihoods;

(d) To dismantle the camps for internally displaced persons in Rakhine State with a clear timeline and without further delay, ensuring that the return and relocation of internally displaced persons is carried out in accordance with international standards and best practices, in cooperation with the United Nations and the international community, including as set forth in the Guiding Principles on Internal Displacement;[11]

(e) To ensure full protection of the human rights and fundamental freedoms of all persons in Myanmar, including Rohingya Muslims and persons belonging to other minorities, in an equal, non-discriminatory and dignified manner, in order to prevent further instability and insecurity, alleviate suffering, address the root causes of the crisis and forge a viable, lasting and durable solution;

(f) To build trust among Rohingya Muslims in camps in Bangladesh, through confidence-building measures, including direct communication between the Rohingya representatives and the Myanmar authorities;

(g) To create the conditions necessary for the safe, voluntary, dignified and sustainable return of all refugees, including Rohingya Muslim refugees, particularly in view of the fact that Rohingya Muslims refused to return to Myanmar on two prior occasions that had been bilaterally set up between Bangladesh and Myanmar for repatriation to commence, owing to the failure of the Government of Myanmar to create such conditions in Rakhine State;

(h) To ensure the conduct of credible, inclusive and transparent general elections in 2020;

(i) To fulfil its human rights obligations and commitments to protect the right to freedom of expression, including online, and the rights to freedom of association and peaceful assembly, to create and maintain a safe and enabling environment for civil society and independent media;

[11] E/CN.4/1998/53/Add.2, annex.

(j) To fully implement all recommendations of the Advisory Commission on Rakhine State to address the root causes of the crisis;

9. *Underscores* the importance of providing protection and assistance, including non-discriminatory access to services such as medical and psychosocial care, specifically tailored to women and girls, especially those who are victims of sexual and gender-based violence and human trafficking;

10. *Reiterates its deep concern* at the continued plight of Rohingya Muslim refugees and forcibly displaced persons living in Bangladesh and in other countries, and appreciates the commitment by the Government of Bangladesh to provide temporary shelter, humanitarian assistance and protection to them;

11. *Notes* the establishment of the Inter-Ministerial Committee for the Prevention of the Six Grave Violations during Armed Conflict on 7 January 2019 by the Government of Myanmar, and of the agreement by Parliament to the ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict,[12] invites the Government to continue the implementation of the action plan to end and prevent the recruitment and use of children by government forces, and calls upon the Government to engage with the United Nations in developing, adopting and implementing without undue delay comprehensive action plans addressing killing, maiming, rape and other sexual violence for which the Tatmadaw, including the integrated border forces, are listed in the annual report of the Secretary General;

12. *Welcomes* the recent extension for one year of the memorandum of understanding between the Government of Myanmar, the United Nations Development Programme and the Office of the United Nations High Commissioner for Refugees to associate them to the implementation of bilateral arrangements with Bangladesh on the return of displaced persons from Rakhine State, and emphasizes the need for the Government of Myanmar to continue to cooperate fully with the Government of Bangladesh and with the United Nations, in particular the Office of the United Nations High Commissioner for Refugees, and in consultation with the populations concerned to enable the safe, voluntary, dignified, sustainable and well-informed return of all refugees and forcibly displaced persons and internally displaced persons to their places of origin in Myanmar, and to give returnees freedom of movement and unimpeded access to livelihoods, social services, including health services, education and shelter, and to compensate them for all losses;

13. *Expresses grave concern* at the potential retraumatization of survivors of human rights violations and abuses, particularly child survivors and sexual violence survivors, and calls upon all actors engaging in documentation to follow the "do-no-harm" principle for evidence-gathering in order to respect the dignity of survivors and to avoid retraumatization;

14. *Encourages* Myanmar to continue to work with Bangladesh, in line with the bilateral instruments on repatriation signed by Bangladesh and Myanmar, in order to expedite the creation of a conducive environment for the voluntary, safe, dignified and sustainable return of the forcibly displaced Rohingya in Bangladesh, with the full support and meaningful involvement of the international community, including the United Nations and its funds, programmes and agencies, and stresses the importance of meaningfully engaging with civil society;

15. *Encourages* the international community to (a) assist Bangladesh in providing humanitarian assistance to Rohingya refugees and forcibly displaced persons until such time as they are voluntarily repatriated to Myanmar in safety and

[12] United Nations, *Treaty Series*, vol. 2173, No. 27531.

dignity; and (b) assist Myanmar in the provision of humanitarian assistance to affected persons of all communities who have been internally displaced, including those in camps for internally displaced persons within Rakhine State;

16. *Urges* the international community to support the 2019 joint response plan for the Rohingya humanitarian crisis to ensure adequate resources for addressing the humanitarian crisis;

17. *Recognizes with appreciation* the assistance and support of the international community, including regional organizations, in particular the Association of Southeast Asian Nations, and the countries neighbouring Myanmar, and encourages support for the Government of Myanmar in the fulfilment of its international human rights obligations and commitments, the implementation of its democratic transition process, inclusive socioeconomic development and sustainable peace, as well as its national reconciliation process involving all relevant stakeholders;

18. *Requests* the Secretary-General:

(a) To continue to provide his good offices and to pursue his discussions relating to Myanmar, involving all relevant stakeholders, and to offer assistance to the Government of Myanmar;

(b) To extend the appointment of the Special Envoy on Myanmar and submit the report of the Special Envoy covering all relevant issues addressed in the present resolution to the General Assembly at its seventy-fifth session;

(c) To provide all assistance necessary to enable the Special Envoy on Myanmar to effectively discharge her mandate and to report to Member States every six months, or as warranted by the situation on the ground;

(d) To identify ways in which the existing mandates can more effectively deliver in their respective areas of responsibility concerning Myanmar and can complement each other's work through enhanced coordination;

(e) To call the continued attention of the Security Council to the situation in Myanmar with concrete recommendations for action towards resolving the humanitarian crisis, promoting the safe, dignified, voluntary and sustainable return of Rohingya refugees and forcibly displaced persons and ensuring accountability for those responsible for mass atrocities and human rights violations and abuses;

(f) To fully implement the recommendations contained in the report of the independent inquiry into the involvement of the United Nations in Myanmar from 2010 to 2018;

19. *Requests* that the Special Envoy continue to participate by way of interactive dialogue in the seventy-fifth session of the General Assembly;

20. *Decides* to remain seized of the matter, inter alia, on the basis of the reports of the Secretary-General, the independent international fact-finding mission on Myanmar, the Independent Mechanism, the Special Rapporteur on the situation of human rights in Myanmar and the Special Envoy of the Secretary-General on Myanmar.

52nd (resumed) plenary meeting
27 December 2019

Annex 87

Voting record on UNGA resolution 74/246

Available at:

https://digitallibrary.un.org/record/3841021

Annex 87

Situation of human rights of Rohingya Muslims and other minorities in Myanmar :

Situation of human rights of Rohingya Muslims and other minorities in Myanmar : resolution / adopted by the General Assembly

2019

Formats

Add to List

Details	
Title	Situation of human rights of Rohingya Muslims and other minorities in Myanmar : resolution / adopted by the General Assembly
Agenda	A/74/251 70c Human rights situations and reports of special rapporteurs and representatives. HUMAN RIGHTS--REPORTS A/74/251 70c[5] HUMAN RIGHTS--MYANMAR
Resolution	A/RES/74/246
Meeting record	A/74/PV.52
Draft resolution	A/C.3/74/L.29
Committee report	A/74/399/Add.3
Note	RECORDED - No machine generated vote

Annex 87

Situation of human rights of Rohingya Muslims and other minorities in Myanmar :

Vote summary	Voting Summary Yes: 134 | No: 9 | Abstentions: 28 | Non-Voting: 22 | Total voting membership: 193
Vote date	2019-12-27
Vote	Y AFGHANISTAN Y ALBANIA Y ALGERIA Y ANDORRA ANGOLA Y ANTIGUA AND BARBUDA Y ARGENTINA Y ARMENIA Y AUSTRALIA Y AUSTRIA Y AZERBAIJAN Y BAHAMAS Y BAHRAIN Y BANGLADESH Y BARBADOS N BELARUS Y BELGIUM Y BELIZE Y BENIN A BHUTAN Y BOLIVIA (PLURINATIONAL STATE OF) Y BOSNIA AND HERZEGOVINA Y BOTSWANA Y BRAZIL Y BRUNEI DARUSSALAM Y BULGARIA Y BURKINA FASO A BURUNDI Y CABO VERDE N CAMBODIA A CAMEROON Y CANADA A CENTRAL AFRICAN REPUBLIC Y CHAD Y CHILE N CHINA Y COLOMBIA COMOROS CONGO Y COSTA RICA Y COTE D'IVOIRE Y CROATIA CUBA Y CYPRUS

Y CZECHIA
A DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA
DEMOCRATIC REPUBLIC OF THE CONGO
Y DENMARK
Y DJIBOUTI
DOMINICA
Y DOMINICAN REPUBLIC
Y ECUADOR
Y EGYPT
Y EL SALVADOR
A EQUATORIAL GUINEA
A ERITREA
Y ESTONIA
ESWATINI
Y ETHIOPIA
FIJI
Y FINLAND
Y FRANCE
Y GABON
Y GAMBIA
Y GEORGIA
Y GERMANY
Y GHANA
Y GREECE
GRENADA
Y GUATEMALA
Y GUINEA
GUINEA-BISSAU
Y GUYANA
Y HAITI
Y HONDURAS
Y HUNGARY
Y ICELAND
A INDIA
Y INDONESIA
Y IRAN (ISLAMIC REPUBLIC OF)
Y IRAQ
Y IRELAND
Y ISRAEL
Y ITALY
Y JAMAICA
A JAPAN
Y JORDAN
Y KAZAKHSTAN
A KENYA
KIRIBATI
Y KUWAIT
Y KYRGYZSTAN

N LAO PEOPLE'S DEMOCRATIC REPUBLIC
Y LATVIA
Y LEBANON
A LESOTHO
Y LIBERIA
Y LIBYA
Y LIECHTENSTEIN
Y LITHUANIA
Y LUXEMBOURG
Y MADAGASCAR
Y MALAWI
Y MALAYSIA
Y MALDIVES
Y MALI
Y MALTA
Y MARSHALL ISLANDS
Y MAURITANIA
Y MAURITIUS
Y MEXICO
Y MICRONESIA (FEDERATED STATES OF)
Y MONACO
A MONGOLIA
Y MONTENEGRO
Y MOROCCO
A MOZAMBIQUE
N MYANMAR
A NAMIBIA
A NAURU
A NEPAL
Y NETHERLANDS
Y NEW ZEALAND
NICARAGUA
NIGER
Y NIGERIA
Y NORTH MACEDONIA
Y NORWAY
Y OMAN
Y PAKISTAN
A PALAU
Y PANAMA
Y PAPUA NEW GUINEA
Y PARAGUAY
Y PERU
N PHILIPPINES
Y POLAND
Y PORTUGAL
Y QATAR
Y REPUBLIC OF KOREA

Y REPUBLIC OF MOLDOVA
Y ROMANIA
N RUSSIAN FEDERATION
Y RWANDA
Y SAINT KITTS AND NEVIS
Y SAINT LUCIA
A SAINT VINCENT AND THE GRENADINES
SAMOA
Y SAN MARINO
SAO TOME AND PRINCIPE
Y SAUDI ARABIA
Y SENEGAL
A SERBIA
SEYCHELLES
Y SIERRA LEONE
A SINGAPORE
Y SLOVAKIA
Y SLOVENIA
Y SOLOMON ISLANDS
SOMALIA
Y SOUTH AFRICA
SOUTH SUDAN
Y SPAIN
A SRI LANKA
Y SUDAN
Y SURINAME
Y SWEDEN
Y SWITZERLAND
SYRIAN ARAB REPUBLIC
Y TAJIKISTAN
A THAILAND
A TIMOR-LESTE
Y TOGO
A TONGA
A TRINIDAD AND TOBAGO
Y TUNISIA
Y TURKEY
TURKMENISTAN
Y TUVALU
Y UGANDA
UKRAINE
Y UNITED ARAB EMIRATES
Y UNITED KINGDOM
A UNITED REPUBLIC OF TANZANIA
Y UNITED STATES
Y URUGUAY
UZBEKISTAN
Y VANUATU

Situation of human rights of Rohingya Muslims and other minorities in Myanmar :

	A VENEZUELA (BOLIVARIAN REPUBLIC OF) N VIET NAM Y YEMEN A ZAMBIA N ZIMBABWE
Collections	Resource Type > Voting Data

Annex 88

UN News, "Top UN court orders Myanmar to protect Rohingya from genocide", 23 January 2020

Available at:

https://news.un.org/en/story/2020/01/1055841

Top UN court orders Myanmar to protect Rohingya from genocide

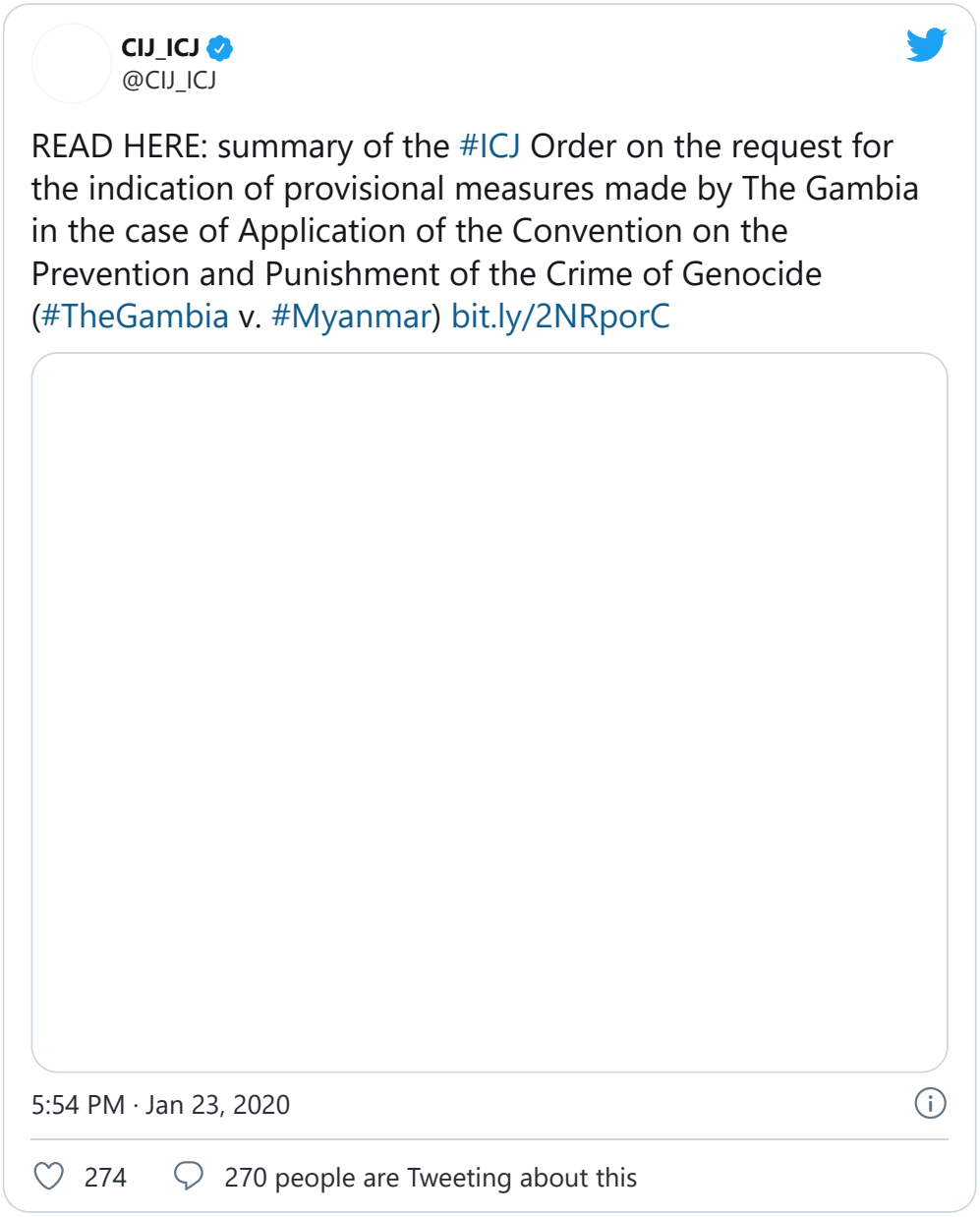
ICJ-CIJ/Wendy van Bree | Judges at the International Court of Justice in The Hague consider the case against Myanmar.

23 January 2020 | Human Rights (/en/news/topic/human-rights)

Myanmar must take steps to protect its minority Rohingya population, the top UN court unanimously ruled (https://www.icj-cij.org/files/case-related/178/178-20200123-PRE-01-00-EN.pdf) on Thursday.

The International Court of Justice (ICJ (https://www.icj-cij.org/en)) also ordered authorities to prevent the destruction of evidence related to genocide allegations.

The case against Myanmar was brought to the ICJ (https://www.icj-cij.org/) in November by The Gambia, on behalf of the Organization of Islamic Cooperation (OIC), arguing that the mainly-Muslim Rohingya had been subjected to genocide.



The Rohingya primarily reside in Rakhine state in northern Myanmar, a majority Buddhist country.

More than 700,000 members fled to neighbouring Bangladesh following a reported military crackdown in August 2017 during which numerous alleged human rights abuses were committed.

According to news reports, around 600,000 Rohingya remain inside the country, and remain extremely vulnerable to attacks and persecution, said the court.

In its ruling, the ICJ imposed "provisional measures" against Myanmar, ordering the country to comply with obligations under the Convention on the Prevention and Punishment of the Crime of Genocide (https://www.ohchr.org/EN/ProfessionalInterest/Pages/CrimeOfGenocide.aspx).

Myanmar is urged to "take all measures within its power" to prevent the killing of Rohingya, or causing bodily or mental harm to members of the group, including by the military or "any irregular armed units".

The country also has to submit a report to the ICJ within four months, with additional reports due every six months "until a final decision on the case is rendered by the Court."

Aung San Suu Kyi testimony

Last December, Myanmar's de facto leader, Aung San Suu Kyi, testified at the start of court proceedings on behalf of her country and described the case as "an incomplete and misleading factual picture" of events in Rakhine state.

She told the court military leaders would be put on trial if found guilty, stressing that "if war crimes have been committed, they will be prosecuted within our own military justice system."

Thursday's ruling amounts to a rejection of those arguments, and the ICJ's orders are binding on Myanmar, despite being provisional.

The court's orders will be passed on for consideration by the UN Security Council (https://www.un.org/securitycouncil/) , although a final court judgement in the case is expected to take years, according to news reports.

Court decision is binding: UN Secretary-General

UN chief António Guterres has welcomed the court decision, his spokesman said in a statement (https://www.un.org/sg/en/content/sg/statement/2020-01-23/statement-attributable-the-spokesman-for-the-secretary-general-the-international-court-of-justice-order-the-case-the-gambia-vs-myanmar).

"The Secretary-General strongly supports the use of peaceful means to settle international disputes. He further recalls that, pursuant to the (UN) Charter and to the Statute of the Court, decisions of the Court are binding and trusts that Myanmar will duly comply with the Order from the Court," it said.

The Secretary-General will transmit the notice about the provisional measures to the UN Security Council.

Role of the Court

The ICJ is the principal judicial organ of the United Nations and is commonly known as the world court.

It settles legal disputes submitted by States and gives advisory opinions on legal questions referred by UN entities.

The Court is composed of 15 judges, elected to nine-year terms, and is based in The Hague, in the Netherlands.

Myanmar rights expert concludes mission

Relatedly, an independent human rights expert on Thursday concluding her final mission as the UN Special Rapporteur on Myanmar.

Yanghee Lee's last request to enter the country was denied by the Government, and she visited Thailand and Bangladesh to gather information about the situation in Myanmar from both sides of the border.

"Myanmar's denial of access has not dissuaded me from doing everything I can to impartially report to the international community accurate first-hand information that has been provided to me during my visits to the region," she said. (https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25462&LangID=E)

"My mission and the end of my tenure come at a critical time for human rights in Myanmar and I will continue to strive to do my utmost to improve the situation."

Ms. Lee was appointed by the UN Human Rights Council (https://www.ohchr.org/EN/HRBodies/HRC/Pages/Home.aspx) in 2014 and conducted biannual visits to Myanmar until she was denied entry from December 2017.

She will deliver her final report to the Geneva-based Council in Geneva in March.

INTERNATIONAL COURT OF JUSTICE (/EN/TAGS/INTERNATIONAL-COURT-JUSTICE) | MYANMAR (/EN/TAGS/MYANMAR) | ROHINGYA (/EN/TAGS/ROHINGYA)

Annex 89

ONU Info, “La CIJ ordonne au Myanmar de prendre des mesures d’urgence pour protéger les Rohingya”, 23 January 2020

Available at:

https://news.un.org/fr/story/2020/01/1060431

La CIJ ordonne au Myanmar de prendre des mesures d'urgence pour protéger les Rohingya

ICJ-CIJ/Wendy van Bree | Les juges de la Cour internationale de Justice, à La Haye, examinent l'affaire portée par la Gambie contre le Myanmar.

23 janvier 2020 | **Droits de l'homme (/fr/news/topic/human-rights)**

La Cour internationale de justice (CIJ), la plus haute instance judiciaire des Nations Unies, a ordonné jeudi au Myanmar de prendre des mesures d'urgence pour protéger les Rohingya, un groupe minoritaire de confession musulmane, et

prévenir un éventuel génocide.

Ces mesures conservatoires avaient été demandées en novembre 2019 par la Gambie, dans l'attente de la décision définitive de la Cour en l'affaire intitulée « Application de la convention pour la prévention et la répression du crime de génocide (Gambie c. Myanmar) ».

La CIJ (https://www.icj-cij.org/fr/cour), qui est basée à La Haye (Pays-Bas), a rappelé que son pouvoir d'indiquer des mesures conservatoires « n'est exercé que s'il existe un risque réel et imminent qu'un préjudice irréparable soit causé aux droits en cause avant que la Cour ne rende sa décision définitive ». Les décisions de la CIJ, qui règle les différends entre Etats, sont contraignantes.

La Gambie, qui a déposé sa requête au nom de l'Organisation de la coopération islamique (OCI), accuse le Myanmar d'avoir violé la Convention des Nations Unies de 1948 pour la prévention et la répression du crime de génocide en commettant des actes de génocide à l'encontre des Rohingya, qui résident principalement dans l'Etat de Rakhine (Myanmar).

CIJ/Frank van Beek | Aung San Suu Kyi comparaît devant la Cour internationale de Justice (CIJ) des Nations Unies le 11 décembre 2019.

Aung San Suu Kyi a plaidé la cause du Myanmar

Le 11 décembre 2019, la cheffe de facto du Myanmar, Aung San Suu Kyi, était venue devant la CIJ à La Haye pour plaider la cause de son pays contre les accusations de génocide.

Depuis août 2017, environ 740.000 Rohingya se sont réfugiés au Bangladesh pour fuir les exactions de l'armée et de milices.

Le Secrétaire général de l'ONU, António Guterres (https://www.un.org/sg/fr/content/sg/biography), s'est félicité jeudi de la décision de la CIJ.

« Le Secrétaire général appuie fermement l'utilisation de moyens pacifiques pour régler les différends internationaux. Il rappelle en outre qu'en vertu de la Charte et du Statut de la Cour, les décisions de la Cour sont contraignantes et espère que le Myanmar se conformera dûment à l'ordonnance de la Cour », a dit son porte-parole dans une déclaration à la presse.

« Conformément au Statut de la Cour, le Secrétaire général transmettra sans délai l'avis des mesures conservatoires ordonnées par la Cour au Conseil de sécurité », a-t-il ajouté.

Parmi les mesures conservatoires, la CIJ a décidé à l'unanimité que le Myanmar doit « prendre toutes les mesures en son pouvoir afin de prévenir la commission, à l'encontre des membres du groupe rohingya présents sur son territoire, de tout acte entrant dans le champ d'application de l'article II de la convention, en particulier : a) meurtre de membres du groupe ; b) atteinte grave à l'intégrité physique ou mentale de membres du groupe ; c) soumission intentionnelle du groupe à des conditions d'existence devant entraîner sa destruction physique totale ou partielle ; et d) mesures visant à entraver les naissances au sein du groupe ».

La Cour a également décidé à l'unanimité que le Myanmar « doit veiller à ce que ni ses unités militaires, ni aucune unité armée irrégulière qui pourrait relever de son autorité ou bénéficier de son appui ou organisation ou personne qui pourrait se trouver sous son contrôle, son autorité ou son influence ne commettent, à l'encontre des membres du groupe rohingya présents sur son territoire, l'un quelconque des actes définis (ci-dessus), ou ne participent à une entente en vue de commettre le génocide, n'incitent directement et publiquement à le commettre, ne se livrent à une tentative de génocide ou ne se rendent complices de ce crime ».

La CIJ a aussi décidé à l'unanimité que le Myanmar « doit prendre des mesures effectives pour prévenir la destruction et assurer la conservation des éléments de preuve relatifs aux allégations d'actes entrant dans le champ d'application de l'article II de la convention pour la prévention et la répression du crime de génocide » et a décidé à l'unanimité que le Myanmar « doit fournir à la Cour un rapport sur l'ensemble des mesures prises pour exécuter la présente ordonnance dans un délai de quatre mois à compter de la date de celle-ci, puis tous les six mois jusqu'à ce que la Cour ait rendu sa décision définitive en l'affaire ».

Par ailleurs, les juges de la Cour pénale internationale (CPI (https://www.icc-cpi.int/?ln=fr)), qui est chargée de juger les individus, ont autorisé en novembre 2019 la Procureure de la CPI (https://www.icc-cpi.int/?ln=fr) de procéder à une enquête sur des crimes contre l'humanité présumés commis contre les Rohingya.

Photo : ONU/Jean-Marc Ferré | La Rapporteure spéciale sur la situation des droits de l'homme au Myanmar, Yanghee Lee.

Il n'est pas trop tard pour que le gouvernement change de cap (experte de l'ONU)

De son côté, la Rapporteure spéciale des Nations Unies sur la situation des droits de l'homme au Myanmar, Yanghee Lee, a déclaré jeudi qu'elle espérait toujours que la transition démocratique continue dans ce pays.

« J'espère toujours que la transition démocratique promise se poursuivra, car il n'est pas trop tard pour que le gouvernement change de cap. Le gouvernement du Myanmar doit assumer ses responsabilités, ses obligations et ses devoirs », a dit l'experte dans un communiqué à la suite d'une visite en Thaïlande et au Bangladesh, pays voisins du Myanmar.

Le mandat de Mme Lee se termine cette année. Elle a pris ses fonctions en 2014, lorsque la transition démocratique du Myanmar, des réformes prometteuses, et des progrès encourageants étaient une source de « grand optimisme », a-t-elle déclaré. Elle est interdite d'entrée dans le pays depuis décembre 2017.

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