SEPARATE OPINION OF JUDGE WEERAMANTRY

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THE ISSUE OF AUTOMATIC SUCCESSION TO THE GENOCIDE CONVENTION

I agree with the majority of my colleagues that the Court does have jurisdiction in this case. However, this case raises the important issue of automatic succession to the Genocide Convention, which has not been developed in the Court's Judgment. I believe it warrants consideration.

One of the principal concerns of the contemporary international legal system is the protection of the human rights and dignity of every individual. The question of succession to the Genocide Convention raises one of the most essential aspects of such protection.

The topic which I wish to address in this opinion is the continuing applicability of the Convention to the populations to which it has applied. When a convention so significant for the protection of human life has been entered into by a State, and that State thereafter divides into two or more successor States, what is the position of its subjects in the interim period that elapses before the formal recognition of the successor States, or before the new State's formal accession to treaties such as the Genocide Convention? I think this situation should not be passed by without attention, especially having regard to the fact that the foundations for a consideration of this matter are to be found in the Court's Opinion in the earlier case on genocide which came before it over forty years ago (*Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 15).

Another reason calling for attention to this topic is the fact that the international community is passing through a historical period, when, throughout the world, the phenomenon is being experienced of the splintering of States. This has occurred with particular intensity especially after the end of the Cold War. It is vitally important that the principle of protection of populations against human rights abuses and atrocities should be strengthened in every manner available under current legal principles; and the clarification of the law relating to State succession to a humanitarian treaty so important as the Genocide Convention is eminently such an area.

Bosnia has contended that there is automatic succession to this treaty, and Yugoslavia denies this proposition. This problem leads into the intricate field of State succession to treaties — a field in which there has been much difference of juristic opinion, and in which many competing theories strive for recognition.

THEORIES RELATING TO STATE SUCCESSION

State succession is one of the oldest problems of international law. As Oscar Schachter reminds us, this problem goes all the way back

to Aristotle who, in his *Politics*, gave his mind to the question of continuity when "the State is no longer the same"[1].

On this problem, the views of jurists have varied between the two poles of universal succession (these were among the earliest theories, taking their conceptual position largely from the analogy of the Roman law of testamentary succession, involving a total succession to the deceased), and of total negativism, involving a complete denial of succession (based upon the conceptual analogy of a personal contract). It is not necessary for present purposes to refer to the various theories lying between these two extremes.

The circumstances of international life have demonstrated that neither of these absolutist theories is adequate to cover all situations that might arise and that any workable theory lies somewhere between these poles[2]. Quite clearly, whichever of these positions one might lean towards, some exceptions must necessarily be admitted.

The question for consideration in this case is whether, even on the basis of the negativist theory that treaties of the predecessor State are not binding, a necessary exception must exist in relation to treaties such as the Genocide Convention. Much guidance is to be had on this question from the consideration of automatic succession to human rights and humanitarian treaties in general. The discussions and literature on this matter suggest a principle of automatic succession to a large range of such treaties. This opinion does not seek to deal with all human rights and humanitarian treaties, but uses principles worked out in the context of such treaties to reach the conclusion that they apply *a fortiori* to the Genocide Convention which, in consequence, is a treaty to which there is automatic State succession according to the contemporary principles of international law.

[1] Oscar Schachter, "State Succession: The Once and Future Law", *Virginia Journal of International Law*, 1992-1993, Vol. 33, p. 253, citing Aristotle, *The Politics*, Book III, Chap. 1. While analysing the constituent elements of a State — territory, government and population — Aristotle refers, *inter alia*, to the question of the continuity of contractual obligations after a change in the State.

[2] A number of studies view multilateral treaties as an exception to the clean slate principle — see Ian Brownlie, *Principles of Public International Law*, 4th ed., 1990, p. 670; D. P. O'Connell, *State Succession in Municipal Law and International Law*, 1967, Vol. II, pp. 212-219. The latest edition of Oppenheim, while observing that there is more room than with regard to treaties generally for the new State, on separation, to be considered bound by multilateral treaties of a law-making nature, singles out treaties of a humanitarian character as especially attracting this view (*Oppenheim's International Law*, 9th ed., Jennings and Watts (eds.), 1992, Vol. 1, s. 64, pp. 222-223). However, the definition of multilateral treaties presents a problem and, for the purposes of the present opinion, it is not necessary to enter into this field.

THE "CLEAN SLATE" PRINCIPLE

(a) *Historical Antecedents of the Clean Slate Principle*

The principle that a new State ought not in general to be fettered with treaty obligations which it has not expressly agreed to assume after it has attained statehood (the clean slate principle) is of considerable historical and theoretical importance. New States ought not, in principle, to be burdened with treaty-based responsibilities without their express consent.

With the sudden advent into the international community of nearly eighty newly independent States in the late fifties and early sixties, there was a realization among them, in the words of Julius Stone, that:

> "their authority or their territory or both are burdened with debts, concessions, commercial engagements of various kinds or other obligations continuing on from the earlier colonial regime . . ."[3].

For example, in Nigeria, 300 treaties negotiated by Britain were said to be applicable to the country[4].

Other newly emerging countries soon became conscious of the dangers to their autonomy involved in this principle, and what came to be known as the Nyerere Doctrine emerged under which none of the colonial treaties became applicable unless the new State, within a specified period of time, notified its accession to such treaties[5]. In the language of Jenks, in relation to State succession to colonial treaties, "The psychology of newly won independence is a formidable reality."[6]

This was not, however, the only historical reality that favoured the clean slate theory. There were numerous older precedents, of which a few illustrative examples may be mentioned. Following the Franco-Prussian war and the transfer of Alsace-Lorraine, French treaties applicable to the

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[3] Julius Stone, "A Common Law for Mankind?", *International Studies*, 1960, Vol. 1, pp. 430-431. See also E. G. Bello, "Reflections on Succession of States in the Light of the Vienna Convention on Succession of States in Respect of Treaties 1978", *German Yearbook of International Law*, 1980, Vol. 23, p. 298; D. P. O'Connell, *State Succession, op. cit.*, p. 116.

[4] By exchange of letters between the Prime Minister and the United Kingdom High Commission on the very day of independence, the Federation assumed all rights and obligations entered into "on their behalf" before independence, and undertook to keep such agreements in force until the Government of Nigeria could consider whether they required modification or renegotiation in any respect (E. G. Bello, *op. cit.*, p. 298).

[5] *Ibid.*, pp. 298-299.

[6] C. Wilfred Jenks, "State Succession in Respect of Law-Making Treaties", *British Year Book of International Law*, 1952, Vol. 29, p. 108.

provinces had, in general[7], to cease to have effect and be replaced by German treaties. Again, British jurists, facing the problem of annexation of colonial territories, tended towards the view that "the treaties of the expunged legal person died with it"[8], so that they received those colonies free of the burden of prior treaties. At the United Nations Conference on Succession of States in Respect of Treaties[9], several other examples were referred to, among them the situation resulting from the termination of the Austro-Hungarian Empire, when Czechoslovakia and Poland emerged as independent States with a clean slate in regard to treaties of the former Austro-Hungarian Empire, except for certain multilateral treaties[10].

The clean slate theory was thus the result of many historical trends[11], and had received favour at one time or another from both emerging and established nations.

(b) *Theoretical Bases of the Clean Slate Principle*

Theoretically, the clean slate principle can be justified on several powerful bases — the principle of individual State autonomy, the principle of self-determination, the principle of *res inter alios acta*, and the principle that there can be no limitations on a State's rights, except with its consent. Newly independent States should not have to accept as a *fait accompli* the contracts of predecessor States, for it is self-evident that the new State must be free to make its own decisions on such matters.

The clean slate principle could also be described as an important corollary to the principle of self-determination, which is of cardinal importance in modern international law. The principle of self-determination could be emptied of an important part of its content if prior treaties automatically bind the new State.

One of the bases of the negativist view is that treaties entered into by the predecessor State are *res inter alios acta*. Castrén, dealing specially with the case of division of a pre-existing State into new States, observes:

> "When a State is dismembered into new independent States, its *treaties* as a rule become null and void without descending to the new States. Treaties are generally personal in so far as they presuppose, in addition to the territory, also the existence of a certain

[7] An exception was, however, in regard to ecclesiastical law, where Napoleon's Concordat with the Holy See continued to apply.

[8] D. P. O'Connell, "Reflections on the State Succession Convention", *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 1979, Vol. 39, p. 735.

[9] Vienna, 4 April-6 May 1977, and 31 July-23 August 1978.

[10] *Official Records*, Vol. III, p. 92, para. 14.

[11] O'Connell, "Reflections on the State Succession Convention", *op. cit.*, p. 735.

sovereign over the territory. To the succeeding State, the treaties concluded by the former State are *res inter alios acta.*" [12]

Basic concepts of State sovereignty also require that any curtailment of the sovereign authority of a State requires the express consent of the State.

If there is to be, in a given case, a deviation from the clean slate principle, sufficiently cogent reasons should exist to demonstrate that the new State's sovereignty is not being thereby impaired. The question needs therefore to be examined as to whether there is any impairment of State sovereignty implicit in the application of the principle of automatic succession to any given treaty.

(c) *Necessary Exceptions to the Clean Slate Principle*

Human rights and humanitarian treaties involve no loss of sovereignty or autonomy of the new State, but are merely in line with general principles of protection that flow from the inherent dignity of every human being which is the very foundation of the United Nations Charter.

At the same time, it is important that the circle of exceptions should not be too widely drawn. Conceivably some human rights treaties may involve economic burdens, such as treaties at the economic end of the spectrum of human rights. It is beyond the scope of this opinion to examine whether all human rights and humanitarian treaties should be exempted from the clean slate principle. It is sufficient for the purposes of this opinion to note a variety of reasons why it has been contended that human rights and humanitarian treaties in general attract the principle of automatic succession. These reasons apply with special force to treaties such as the Genocide Convention or the Convention against Torture, leaving no room for doubt regarding automatic succession to such treaties. The international community has a special interest in the continuity of such treaties.

Reasons Favouring View of Automatic Succession to the Genocide Convention

1. It Is Not Centred on Individual State Interests

This Court, in its earlier consideration of the Genocide Convention, drew pointed attention to the difference between a humanitarian treaty

[12] E. Castrén, "Obligations of States Arising from the Dismemberment of Another State", *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 1950-1951, Vol. 13, p. 754 (emphasis added); cited by M. G. Maloney in *Virginia Journal of International Law*, 1979-1980, Vol. 19, p. 892.

such as the Genocide Convention, and a convention aimed at protecting the interests of a State. The Court stated in its Opinion on *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* that:

> "In such a convention the contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the *raison d'être* of the convention. Consequently, in a convention of this type one cannot speak of individual advantages or disadvantages to States, or of the maintenance of a perfect contractual balance between rights and duties." (*I.C.J. Reports 1951*, p. 23.)

Charles De Visscher has remarked on the contrast

> "between the frailty of agreements of merely individual interest, dependent as these are upon transitory political relations, and the relative stability of conventions dictated by concern for order or respect for law"[13].

He has also remarked in this context that the growing part played by multilateral treaties in the development of international law should count in favour of the transmission rather than disappearance of the obligations they create[14].

Human rights and humanitarian treaties do not represent an exchange of interests and benefits between contracting States in the conventional sense, and in this respect may also be distinguished from the generality of multilateral treaties, many of which are concerned with the economic, security or other interests of States. Human rights and humanitarian treaties represent, rather, a commitment of the participating States to certain norms and values recognized by the international community.

Stated another way, the personality of the sovereign is not the essence of such an agreement. Multilateral treaties are most often concluded with the object of protecting and benefiting the international community as a whole, and for the maintenance of world order and co-operation, rather than of protecting and advancing one particular State's interests.

2. It Transcends Concepts of State Sovereignty

The Genocide Convention does not come to an end with the dismemberment of the original State, as it transcends the concept of State sovereignty. An important conceptual basis denying continuity to treaties is that the recognition of the continuity of the predecessor State's treaties would be an intrusion upon the sovereignty of the successor State. This-

[13] *Theory and Reality in Public International Law*, revised ed., 1968, translated from the French by P. E. Corbett, p. 179.
[14] *Ibid.*

would be so if it were a matter confined within the ambit of a State's sovereignty. But with human rights and humanitarian treaties, we are in a sphere which reaches far beyond the narrow confines of State sovereignty, and enters the domain of universal concern.

In its ongoing development, the concept of human rights has long passed the stage when it was a narrow parochial concern between sovereign and subject. We have reached the stage, today, at which the human rights of anyone, anywhere, are the concern of everyone, everywhere. The world's most powerful States are bound to recognize them, equally with the weakest, and there is not even the semblance of a suggestion in contemporary international law that such obligations amount to a derogation of sovereignty.

3. The Rights It Recognizes Impose No Burden on the State

Moreover, a State, in becoming party to the Convention, does not give away any of its rights to its subjects. It does not burden itself with any new liability. It merely confirms its subjects in the enjoyment of those rights which are theirs by virtue of their humanity. Human rights are never a gift from the State and hence the State, in recognizing them, is not imposing any burden upon itself. We have long passed the historical stage when a sovereign, granting to his subjects what we would today call a human right, could claim their gratitude for surrendering to them what was then considered to be a part of his absolute and undoubted rights as a sovereign. Human rights treaties are no more than a formal recognition by the sovereign of rights which already belong to each of that sovereign's subjects. Far from being largesse extended to them by their sovereign, they represent the entitlement to which they were born.

Quite contrary to the view that human rights treaties are a burden on the new State, it could indeed be asserted that the adherence by a new State to a system which is universally accepted, whereby the new State becomes part of that system, is indeed a benefit to the new State, in sharp contrast to the position of disadvantage in which it would place itself if it stood outside that system.

4. The Obligations Imposed by the Convention Exist Independently of Conventional Obligations

This Court observed in *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, "the principles underlying the [Genocide] Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation" (*I.C.J. Reports 1951*, p. 23). The same may be said of all treaties concerning basic human rights.

The Court referred also in the same Opinion to the universal character of the condemnation of genocide. This condemnation has its roots in the convictions of humanity, of which the legal rule is only a reflection. The same could likewise be said of many of the basic principles of human rights and humanitarian law.

5. It Embodies Rules of Customary International Law

The human rights and humanitarian principles contained in the Genocide Convention are principles of customary international law. These principles continue to be applicable to both sovereign and subjects, irrespective of changes in sovereignty, for the new sovereign, equally with the old, is subject to customary international law. The customary rights which the subjects of that State enjoy continue to be enjoyed by them, whoever may be their sovereign. The correlative duties attach to the sovereign, whoever he may be. The position is no different when those customary rights are also embodied in a treaty.

This factor may indeed be seen in wider context as essential to the evolution of international law into a universal system. Among writers who have stressed this aspect in relation to multilateral treaties are Wilfred Jenks, who observed:

> "It is generally admitted that a new State is bound by existing rules of customary international law. This principle has, indeed, been of fundamental importance in the development of international law into a world-wide system . . . It is not clear why, now that the rules established by multipartite legislative instruments constitute so large a part of the operative law of nations, a new State should be regarded as starting with a clean slate in respect of rules which have a conventional rather than a customary origin."[15]

In regard to such a matter as genocide, there can be no doubt that the treaty is of fundamental importance to the development of the operative law of nations.

6. It Is a Contribution to Global Stability

The strengthening of human rights protections in accordance with universally held values is a matter of universal concern and interest.

The promotion and encouragement of respect for human rights is, according to Article 1 (3) of the United Nations Charter, one of the Purposes of the United Nations, and the reaffirmation of faith in fundamental human rights and the dignity and worth of the human person are

[15] W. Jenks, *op. cit.*, p. 107.

among the foremost objects that the peoples of the United Nations set before themselves "to save succeeding generations from the scourge of war".

Genocide attacks these concepts at their very root and, by so doing, strikes at the foundations of international stability and security.

A State's guarantees of human rights to its subjects in terms of even such a Covenant as the International Covenant on Civil and Political Rights are thus a matter which does not concern that State alone, but represent a contribution to human dignity and global stability — as distinguished, for example, from a commercial or trading treaty. This aspect is all the more self-evident in a treaty of the nature of the Genocide Convention.

At the United Nations Conference on State Succession on 22 April 1977, the Soviet Union drew attention to a letter by the International Committee of the Red Cross to the Chairman of the International Law Commission to the effect that no State had ever claimed to be released from any obligation under the Geneva Conventions. In this connection, the representative of the Soviet Union observed that, "Such a practice had not created difficulties for newly independent States"[16]. He also observed:

> "Thus treaties of a universal character were of paramount importance for the whole international community, and particularly for newly independent States. It was therefore in the interests of not only newly independent States but also of the international community as a whole that a treaty of universal character should not cease to be in force when a new State attained independence."[17]

7. The Undesirability of a Hiatus in Succession to the Genocide Convention

If the contention is sound that there is no principle of automatic succession to human rights and humanitarian treaties, the strange situation would result of the people within a State, who enjoy the full benefit of a human rights treaty, such as the International Covenant on Civil and Political Rights, and have enjoyed it for many years, being suddenly deprived of it as though these are special privileges that can be given or withdrawn at the whim or fancy of Governments. Populations once protected cease to be protected, may be protected again, and may again cease to be protected, depending on the vagaries of political events. Such a legal position seems to be altogether untenable, especially at this stage in the development of human rights.

[16] 24th meeting, 22 April 1977, *Official Records*, Vol. I, p. 164, para. 5.
[17] *Ibid.*, p. 163, para. 2.

Jenks observes, "It is not a matter of perpetuating the dead hand of the past, but of avoiding a legal vacuum."[18] This vacuum could exist over "hundreds of thousands of square miles and millions of citizens . . ."[19]. He also refers to:

> "the uncertainty, confusion and practical inconvenience of a legal vacuum which may be gravely prejudicial not only to the interests of other States concerned but equally to the interests of the new State itself and its citizens"[20].

The undesirability of such a result becomes more evident still if the human rights treaty under consideration is one as fundamental as the Genocide Convention. If the principle set out earlier is not clearly recognized, the international legal system would be endorsing the curious result that people living under guarantees that genocide will not be committed against them will suddenly be deprived of that guarantee, *precisely at the time they need it most* — when there is instability in their State. The anomaly of a grant followed by a withdrawal of the benefits, of such a Covenant as the International Covenant for Civil and Political Rights, becomes compounded in the case of the Genocide Convention, and the result is one which, in my view, international law does not recognize or endorse at the present stage of its development.

Furthermore, there may be circumstances where, after a new State has proclaimed its independence, the accession of that State to statehood may itself be delayed by the non-recognition of a breakaway State by the State from which it breaks away. In such a situation, where advent of the new State to statehood is deliberately delayed by action of the former State, there can be no accession to the treaty by the breakaway State for a considerable time. During that period, it seems unreasonable that the citizens of that breakaway State should be deprived of such protection as the Convention may give them, against acts of genocide by the State from which the secession has occurred, as well as by the State that has seceded. The longer the delay in recognition, the longer then would the period be during which those citizens are left unprotected. Such a result seems to me to be totally inconsistent with contemporary international law — more especially in regard to a treaty protecting such universally recognized rights as the Genocide Convention.

8. The Special Importance of Human Rights Guarantees against Genocide during Periods of Transition

To the strong conceptual position resulting from the foregoing considerations, there must be added the practical imperatives that result from

[18] Jenks, *op. cit.*, p. 109.
[19] *Ibid.*
[20] *Ibid.*

a realistic view of the international situation occurring in the process of the dismemberment of a State, with all the political, social and military turmoil that is known only too well to accompany that process in modern times.

It would in fact be most dangerous to view the break-up of a State as clearing the decks of the human rights treaties and obligations of the predecessor State. It is dangerous even to leave the position unclear, and that is why I have felt impelled to state my opinion upon this all-important matter.

All around us at the present time, the break-up of States has often been accompanied by atrocities of the most brutal and inhuman kind, practised on a scale that defies quantification. To leave a lacuna in the continuity of the law or any vagueness in the perception of that continuity would be fraught with danger to the most cherished values of civilization.

If the principle of continuity in relation to succession of States, adopted in Article 34 (1) in the 1978 Vienna Convention on Succession of States in Respect of Treaties, is to apply to any treaties at all, the Genocide Convention must surely be among such treaties.

Furthermore, humanitarian treaties formulate principles that are an established part of the law of war. The law of war applies, of course, even in regard to an internal war (*vide* Geneva Convention 1977, Protocol II). The applicability of the principles underlying these treaties, among which the Genocide Convention may also be reckoned, becomes particularly important in times of internal turmoil. Such treaties cannot be suspended *sine die* during times of internal unrest such as accompany the break-up of a State, when they are most needed.

9. The Beneficiaries of the Genocide Convention Are Not Third Parties in the Sense Which Attracts the Res Inter Alios Acta *Principle*

The beneficiaries of the Genocide Convention, as indeed of all human rights treaties, are not strangers to the State which recognizes the rights referred to in the Convention. The principle that *res inter alios acta* are not binding, an important basis of the clean slate rule, does not therefore apply to such conventions. There is no vesting of rights in extraneous third parties or in other States, and no obligation on the part of the State to recognize any rights of an external nature. Far from being a transaction *inter alios*, such treaties promote the highest internal interests which any State can aspire to protect.

10. The Rights Conferred by the Convention Are Non-derogable

The rights and obligations guaranteed by the Genocide Convention are non-derogable, for they relate to the right to life, the most fundamental

of human rights, and an integral part of the irreducible core of human rights. It relates not merely to the right to life of one individual, but to that right *en masse*.

Moreover, under the Genocide Convention, the obligation of States is not merely to refrain from committing genocide, but to *prevent* and *punish* acts of genocide. The failure by a successor régime to assume and discharge this obligation would be altogether incompatible with State obligations as recognized in contemporary international law.

Another possible line of enquiry, not necessary for the determination of the present matter, is the analogy between a treaty vesting human rights, and a dispositive treaty vesting property rights. From the time of Vattel[21], such a dispositive treaty, as for example a treaty recognizing a servitude, has been looked upon as vesting rights irrevocably in the party to whom they were granted; and those rights, once vested, could not be taken away. Perhaps in comparable fashion, human rights, once granted, become vested in the persons enjoying them in a manner comparable, in their irrevocable character, to vested rights in a dispositive treaty[22].

This interesting legal hypothesis need not detain us here as the conclusion I have reached is amply supported by the other principles discussed.

* * *

Some of the reasons set out above, even considered individually, are cogent enough to demonstrate the applicability of automatic succession to the Genocide Convention (and indeed to a wide range of human rights and humanitarian treaties). Taken cumulatively, they point strongly to the clear incompatibility with international law of the contention that the Genocide Convention ceases to apply to the subjects of a State upon the division of that State.

[21] See E. de Vattel, *The Law of Nations or Principles of Natural Law*, C. Fenwick (trans.), 1916, p. 169, referred to in *Virginia Journal of International Law*, 1979-1980, Vol. 19, p. 888, note 16.

[22] On the possible extension to human rights of the doctrine of acquired rights which has traditionally been applied to dispositive treaties and property rights, see Malcolm N. Shaw, "State Succession Revisited", *Finnish Yearbook of International Law*, 1994, Vol. 5, p. 82; Rein Mullerson, "The Continuity and Succession of States, by Reference to the Former USSR and Yugoslavia", *International and Comparative Law Quarterly*, 1993, Vol. 42, pp. 490-491. See also the statement at the Human Rights Committee of one of its members referring to these rights as "acquired rights" which were not "diluted" when a State was divided (Serrano Caldera, CCPR/C/SR.1178/Add.1, 5 November 1992, p. 9).

INTERNATIONAL PRESSURE FOR RECOGNITION OF THE PRINCIPLE OF AUTOMATIC SUCCESSION

In the discussions that took place at the United Nations Conference on Succession of States in Respect of Treaties, this aspect of a need to prevent a hiatus occurring in the process of succession of States received emphasis from several States. The position was well summarized by one delegate who, while pointing out that the "essence of the problem was to strike a balance between continuity and the freedom of choice which was the basis of the 'clean slate' principle"[23], stated that, in the case of multilateral treaties, the need for continuity was pressing. He described as an "international vacuum" the situation that could arise if this were not the case, and spoke of this as "a lacuna inconvenient both to the newly independent State and to the international community"[24].

This question has also been considered in some depth by the Commission on Human Rights and by the Human Rights Committee.

At its forty-ninth session, the Commission on Human Rights adopted resolution 1993/23 of 5 March 1993, entitled "Succession of States in respect of international human rights treaties". This resolution encouraged successor States to confirm officially that they continued to be bound by international obligations under relevant human rights treaties. The special nature of human rights treaties was further confirmed by the Commission in its resolution 1994/16 of 25 February 1994, and the Commission, in that resolution, reiterated its call to successor States which had not yet done so to confirm to appropriate depositories that they continued to be bound by obligations under international human rights treaties.

The Committee on Human Rights, at its forty-seventh session (March-April 1993), stated that all the people within the territory of a former State party to the Covenant remained entitled to the guarantees under the Covenant.

It is worthy of note also that during the fifth meeting of persons chairing the human rights treaty bodies, held from 19 to 23 September 1994:

> "The chairpersons emphasized, however, that they were of the view that successor States were automatically bound by obligations under international human rights instruments from the respective date of independence and that observance of the obligations should

[23] Mr. Shahabuddeen, speaking for Guyana, 23rd Meeting, 21 April 1977, *Official Records*, Vol. I, p. 163.

[24] *Ibid.*, p. 162. See, also, Sweden, Mr. Hellners, 26th meeting, 25 April 1977, *ibid.*, p. 177.

not depend on a declaration of confirmation made by the Government of the successor State."[25]

The *Ad Hoc* Committee on Genocide also made the important point that the crime of genocide generally entails the complicity or direct involvement of Governments[26], and national courts are likely to be reluctant or ineffective in adjudicating claims of State-sponsored genocide[27] — hence the importance of Article IX.

All of these views, though not authoritative in themselves, serve to underline the principle here under discussion. These are all committees with special experience of handling problems in the human rights area, and the force of their conviction of the necessity of such a rule emphasizes how vital it is in actual practice.

If such should be the principle suggested, in regard to human rights conventions such as the Covenant on Civil and Political Rights, one can be left in little doubt regarding its essentiality in regard to conventions such as the Genocide Convention.

A clarification of this principle is one of the ways in which international law can respond to the needs of international society.

In the words of Jenks, written in the context of State succession to treaties:

> "if our legal system fails to respond to the widely felt and urgent needs of a developing international society, both its authority as a legal system and the prospect of developing a peaceful international order will be gravely prejudiced"[28].

* * *

All of the foregoing reasons combine to create what seems to me to be a principle of contemporary international law that there is automatic State succession to so vital a human rights convention as the Genocide Convention. Nowhere is the protection of the quintessential human right — the right to life — more heavily concentrated than in that Convention.

Without automatic succession to such a Convention, we would have a situation where the worldwide system of human rights protections con-

[25] E/CN.4/1995/80, 28 November 1994, p. 4.

[26] United Nations, *Official Records of the Economic and Social Council, Ad Hoc* Committee on Genocide, Sixth Session, 4th meeting, United Nations doc. E/AC.25/SR.4 (1948), pp. 3-5, cited in M. Lippman, "The 1948 Convention on the Prevention and Punishment of the Crime of Genocide: Forty-five Years Later", *Temple International and Comparative Law Journal*, 1994, Vol. 8, p. 70.

[27] *Ibid.*

[28] Jenks, *op. cit.*, p. 110.

tinually generates gaps in the most vital part of its framework, which open up and close, depending on the break-up of the old political authorities and the emergence of the new. The international legal system cannot condone a principle by which the subjects of these States live in a state of continuing uncertainty regarding the most fundamental of their human rights protections. Such a view would grievously tear the seamless fabric of international human rights protections, endanger peace, and lead the law astray from the Purposes and Principles of the United Nations, which all nations, new and old, are committed to pursue.

(Signed) Christopher Gregory WEERAMANTRY.