

## Chapter III

## Legal aspects of international political relations

In 1998, following six years of preparatory work by the International Law Commission (ILC) and General Assembly committees, a plenipotentiary conference adopted the Rome Statute of the International Criminal Court. When ratified, the Statute would establish the Court as a permanent institution with power to investigate and bring to justice individuals accused of the most serious crimes of international concern, including genocide, crimes against humanity, war crimes and the crime of aggression. The Conference also set up a Preparatory Commission to prepare proposals for practical arrangements for the Court, including draft rules of procedure and evidence.

At its fiftieth session, ILC completed the first reading of draft articles on prevention of transboundary damage from hazardous activities and transmitted them to Governments for comment. Consideration also continued of draft articles on unilateral acts of States and on State responsibility. ILC adopted draft guidelines on reservations to treaties and established a working group to advance its work on diplomatic protection.

The Ad Hoc Committee established by the Assembly in 1996 to elaborate an international convention on the suppression of nuclear terrorism continued its work on a draft convention, focusing on the definition of material and offences to be covered under the proposed convention. It conducted a first reading of substantive provisions and the Assembly directed it to continue.

In August, the Security Council condemned terrorist attacks on the United States embassies in Nairobi (Kenya) and Dar es Salaam (United Republic of Tanzania) and called on States to cooperate in preventing such acts. The Secretary-General and the Assembly continued to work on the protection, security and safety of diplomatic and consular missions and representatives.

### Establishment of the International Criminal Court

The United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court was held in Rome, Italy, from 15 June to 17 July, with the participa-

tion of 160 Member States. Represented as observers were 31 organizations and other entities and 136 non-governmental organizations. The Conference was held in accordance with General Assembly resolution 52/160 [YUN 1997, p. 1345].

On 17 July, the Conference adopted the Rome Statute of the International Criminal Court [A/CONF.183/9], establishing the Court as a permanent institution with the power to exercise its jurisdiction over persons for the most serious crimes of international concern as defined in the Statute—genocide, crimes against humanity, war crimes and the crime of aggression. The Statute, which consisted of 13 parts containing a total of 128 articles, would enter into force after its ratification, acceptance, approval or accession by 60 States. By 31 December, 71 States had signed the Statute and one had ratified it.

The Conference also signed a Final Act [A/CONF.183/10], to which it annexed six resolutions. In one resolution, the Conference recognized that terrorist acts and international trafficking of illicit drugs were serious crimes of concern to the international community; regretted that no generally acceptable definition of the crimes was agreed on; affirmed that the Rome Statute provided for a review mechanism, which allowed for an expansion in future of its jurisdiction; and recommended that a review conference consider the crimes of terrorism and drug crimes with a view to arriving at an acceptable definition and their inclusion in the list of crimes within the jurisdiction of the Court. By another resolution, the Conference established the Preparatory Commission for the International Criminal Court, which would prepare proposals for practical arrangements for the Court's establishment, including the draft texts of: rules of procedure and evidence; elements of crimes; a relationship agreement between the Court and the United Nations; basic principles for a headquarters agreement with the host country; financial regulations and rules; an agreement on privileges and immunities of the Court; a budget for the first financial year; and rules of procedure of the Assembly of States Parties. The Commission would prepare proposals for a provision on aggression, including the definition and elements of crimes of aggression and the conditions under which the Court would exercise its juris-

diction. In other resolutions, gratitude was expressed for the preparatory work for the Conference.

**Preparatory Committee.** The Preparatory Committee on the Establishment of an International Criminal Court, established by the General Assembly in resolution 50/46 [YUN 1995, p. 1328] and reaffirmed by the Assembly in resolution 51/207 [YUN 1996, p. 1205], met in New York (16 March-3 April) [A/CONF.183/2] to finalize and adopt a draft statute and the text of a convention as the next step towards consideration by a conference of plenipotentiaries. The Committee conducted its work through working groups on the following subjects: procedural matters; composition and administration of the Court; establishment of the Court and its relationship with the United Nations; applicable law; *ne bis in idem*; jurisdictional issues; and enforcement. The Committee adopted the text of a draft statute for the Court and a draft final act for transmittal to the Conference [A/CONF.183/2/Add.1].

**Note of Secretary General.** The Secretary-General, by a 19 September note [A/53/387], reported to the General Assembly on the action taken at the Rome Conference.

#### GENERAL ASSEMBLY ACTION

On 8 December [meeting 83], the General Assembly, on the recommendation of the Sixth (Legal) Committee [A/53/634], adopted **resolution 53/105** without Vote [agenda item 153].

#### Establishment of an international criminal court

The General Assembly,

Recalling its resolutions 47/33 of 25 November 1992, 48/31 of 9 December 1993, 49/53 of 9 December 1994, 50/46 of 11 December 1995 and 51/207 of 17 December 1996,

Recalling also its resolution 52/160 of 15 December 1997, in which it decided to hold the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court at Rome from 15 June to 17 July 1998,

Expressing satisfaction at the completion of the mandate of that resolution by the adoption of the Rome Statute of the International Criminal Court at the headquarters of the Food and Agriculture Organization of the United Nations on 17 July 1998, noting that the Statute was open for signature in Rome from 17 July until 17 October 1998 and that thereafter it will be open for signature in New York at United Nations Headquarters until 31 December 2000, and taking note of the Final Act of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court done at Rome on 17 July 1998.

Noting that a significant number of States have signed the Rome Statute,

Emphasizing the need to make the necessary arrangements for the commencement of the functions of the

International Criminal Court in order to ensure its effective operation,

Noting in particular that the Conference decided to establish a Preparatory Commission for the Court, consisting of representatives of States that have signed the Final Act of the Conference and other States that were invited to participate in the Conference,

Noting that the Conference requested the Secretary-General to convene the Preparatory Commission at Headquarters as early as possible, at a date to be decided by the General Assembly,

Bearing in mind the mandate of the Preparatory Commission with regard to the preparation of proposals for practical arrangements for the establishment and coming into operation of the Court, including the finalization before 30 June 2000 of the draft texts of the rules of procedure and evidence and of the elements of crimes,

Recognizing the need for making available adequate resources and secretariat services to the Preparatory Commission in order to enable it to discharge its functions efficiently and expeditiously,

1. Acknowledges the historic significance of the adoption of the Rome Statute of the International Criminal Court;

2. Expresses its deep appreciation and gratitude to the Government of Italy for hosting the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court in Rome;

3. Calls upon all States to consider signing and ratifying the Rome Statute, and encourages efforts aimed at promoting awareness of the results of the Conference and of the provisions of the Rome Statute;

4. Requests the Secretary-General to convene the Preparatory Commission, in accordance with resolution F adopted by the Conference, from 16 to 26 February, 26 July to 13 August and 29 November to 17 December 1999, to carry out the mandate of that resolution and, in that connection, to discuss ways to enhance the effectiveness and acceptance of the Court;

5. Also requests the Secretary-General to make available to the Preparatory Commission secretariat services, not including the preparation of working documents, to enable it to perform its functions;

6. Further requests the Secretary-General to invite, as observers to the Preparatory Commission, representatives of organizations and other entities that have received a standing invitation from the General Assembly, pursuant to its relevant resolutions, to participate in the capacity of observers in its sessions and work, and also to invite as observers to the Preparatory Commission representatives of interested regional intergovernmental organizations and other interested international bodies, including the international tribunals for the former Yugoslavia and Rwanda;

7. Notes that non-governmental organizations may participate in the work of the Preparatory Commission by attending its plenary and its other open meetings, in accordance with the rules of procedure to be adopted by the Commission, receiving copies of the official documents and making available their materials to delegates;

8. Requests the Secretary-General to take steps to expand the mandate of the trust fund established pursuant to Assembly resolution 51/207 for voluntary contri-

butions towards meeting the cost of participation in the work of the Preparatory Commission of the least developed countries, and encourages States to contribute voluntarily to this trust fund;

9. Also requests the Secretary-General to take steps to expand the mandate of the trust fund established pursuant to Assembly resolution 52/160 for voluntary contributions towards meeting the cost of participation in the work of the Preparatory Commission of those developing countries not covered by the trust fund referred to in paragraph 8, above, and invites States to contribute voluntarily to this trust fund;

10. Further requests the Secretary-General to report to the General Assembly at its fifty-fourth session on the implementation of the present resolution;

11. Decides to include in the provisional agenda of its fifty-fourth session the item entitled "Establishment of the International Criminal Court".

## International Law Commission

The International Law Commission (ILC), at its fiftieth session (Geneva, 20 April-1 June, and New York, 27 July-14 August) [A/53/10 & Corr.1], held 45 public meetings.

Under the topic of international liability for injurious consequences arising out of acts not prohibited by international law, the Commission adopted on first reading a set of 17 draft articles with commentaries on prevention of transboundary damage from hazardous activities and transmitted them to Governments for comments and observations. It considered the preliminary report of the Special Rapporteur on the topic of diplomatic protection (see below) and established a working group to consider possible conclusions that might be drawn on the basis of the discussion. The Working Group suggested that the Special Rapporteur, in his second report, should concentrate on the issues raised in Chapter One, "Basis for diplomatic protection", of the outline proposed by the previous year's Working Group [YUN 1997, p. 1353].

Regarding the topic of unilateral acts of States (see below), ILC examined the first report of the Special Rapporteur and concentrated mainly on the definition and elements of unilateral acts, the approach to the topic and the final form of the Commission's work. It was agreed to limit the topic to unilateral acts of States issued for the purpose of producing international legal effects and to elaborate possible draft articles with commentaries on the matter, which accordingly ILC requested the Special Rapporteur to submit. On the topic of State responsibility, ILC considered the first report of the Special Rapporteur, which dealt with general issues relating to the draft, the

distinction between "crimes" and "delictual responsibility", and articles 1 to 15 of Part One of the draft. The Commission established a working group to assist the Special Rapporteur in the consideration of various issues during the second reading of the draft articles. ILC decided to refer articles 1 to 15 to the Drafting Committee.

ILC considered the fourth report of the Special Rapporteur on nationality in relation to the succession of States and established a working group to consider the possible orientation for the second part of the topic, nationality of legal persons. The Working Group drew up preliminary conclusions on the subject. The Commission considered the third report of the Special Rapporteur on reservations to treaties, specifically the definition of reservations (and interpretative declarations), and adopted seven draft guidelines on definition of reservations, object of reservations, instances in which reservations might be formulated, reservations having territorial scope, reservations formulated when notifying territorial application, reservations formulated jointly and on the relationship between definitions and admissibility of reservations.

ILC commemorated its fiftieth session by holding a seminar on critical evaluation of the Commission's work and lessons learned for the future and creating the ILC web site. A useful dialogue on subjects of common interest was conducted with the International Court of Justice, the Asian-African Legal Consultative Committee, the Inter-American Juridical Committee and the Ad Hoc Committee of Legal Advisers on Public International Law of the Council of Europe.

The thirty-fourth session of the International Law Seminar for postgraduate students, young professors or government officials dealing with international law was held (Geneva, 11-29 May), with 23 participants, mostly from developing countries. The participants attended meetings of the Commission, as well as lectures organized for them. Denmark, Finland, Germany, Hungary, Ireland, Switzerland and Venezuela made voluntary contributions to the United Nations Trust Fund for the International Law Seminar, thus making it possible to award 15 full and 4 partial fellowships. Since the first seminar in 1965, fellowships had been awarded to 426 of the 760 participants, representing 144 nationalities.

At its 1998 session, ILC considered its work programme for the remainder of the quinquennium and affirmed that the programme set out in its prior session should be complied with to the extent possible and that the Working Group on the long-term programme of work should continue to meet at the next session. ILC also agreed that its 1999 session would be held in Geneva (3 May-

23 July) and that, barring unforeseen circumstances, sessions after 1999 should be scheduled to take place in two roughly equal parts, for a total of 12 weeks in Geneva. Accordingly, the Secretariat was requested to undertake the necessary administrative and budgetary requests. The 2000 session would be held in Geneva (24 April-2 June and 3 July-11 August).

#### GENERAL ASSEMBLY ACTION

On 8 December [meeting 83], the General Assembly, on the recommendation of the Sixth Committee [A/53/631], adopted **resolution 53/102** without vote [agenda item 150].

#### **Report of the International Law Commission on the work of its fiftieth session**

The General Assembly,

Having considered the report of the International Law Commission on the work of its fiftieth session,

Emphasizing the importance of furthering the progressive development of international law and its codification as a means of implementing the purposes and principles set forth in the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,

Emphasizing also the role of the International Law Commission in the fulfilment of the objectives of the United Nations Decade of International Law,

Recognizing the desirability of referring legal and drafting questions to the Sixth Committee, including topics that might be submitted to the International Law Commission for closer examination, and of enabling the Sixth Committee and the Commission further to enhance their contribution to the progressive development of international law and its codification,

Recalling the need to keep under review those topics of international law which, given their new or renewed interest for the international community, may be suitable for the progressive development and codification of international law and therefore may be included in the future programme of work of the International Law Commission,

Stressing the usefulness of structuring the debate on the report of the International Law Commission in the Sixth Committee in such a manner that conditions are provided for concentrated attention to each of the main topics dealt with in the report,

Wishing to enhance further the interaction between the Sixth Committee as a body of governmental representatives and the International Law Commission as a body of independent legal experts, with a view to improving the dialogue between the two organs,

Noting the holding of a split session of the International Law Commission in 1998,

1. Takes note of the report of the International Law Commission on the work of its fiftieth session, and expresses its appreciation to the Commission for the work accomplished at that session, in particular the completion of the first reading of the draft articles on the prevention part of the topic "International liability for injurious consequences arising out of acts not prohibited by international law";

2. Draws the attention of Governments to the importance for the International Law Commission of having their views on all the specific issues identified in chapter III of its report, and invites them to submit comments and observations in writing by 1 January 2000 on the draft articles on international liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary damage from hazardous activities);

3. Recommends that, taking into account the comments and observations of Governments, whether in writing or expressed orally in debates in the General Assembly, the International Law Commission should continue its work on the topics in its current programme;

4. Welcomes the valuable work done by the International Law Commission on the topic "International liability for injurious consequences arising out of acts not prohibited by international law", and requests the Commission, while continuing its work on prevention, to examine other issues arising out of the topic, taking into account comments made by Governments, either in writing or in the Sixth Committee, and to submit its recommendations on the future work to be done on these issues to the Sixth Committee;

5. Invites Governments to submit the most relevant national legislation, decisions of domestic courts and State practice relevant to diplomatic protection in order to assist the International Law Commission in its future work on the topic "Diplomatic protection";

6. Takes note of the consideration by the International Law Commission of its long-term programme of work, and encourages the Commission to proceed with the selection of new topics for its next quinquennium;

7. Welcomes with appreciation the steps taken by the International Law Commission in relation to its internal matters, as contained in paragraphs 543 and 544 of its report, and encourages it to continue enhancing its efficiency and productivity, taking into consideration the discussion held by the General Assembly at its fifty-third session;

8. Endorses the decision by the International Law Commission on the duration of its session in 1999, as presented in paragraph 562 of its report;

9. Takes note of paragraphs 562 and 563 of the report of the International Law Commission regarding the holding of split sessions as of 2000, requests the Commission to examine the advantages and disadvantages of such split sessions, and decides to return to this matter at its fifty-fourth session;

10. Stresses the desirability of enhancing dialogue between the International Law Commission and the Sixth Committee, and in this context requests the Commission to submit any recommendations to that effect;

11. Requests the International Law Commission to continue to pay special attention to indicating in its annual report, for each topic, any specific issues on which expressions of views by Governments, either in the Sixth Committee or in written form, would be of particular interest in providing effective guidance for the Commission in its further work;

12. Also requests the International Law Commission to continue the implementation of article 16, paragraph (e), and article 26, paragraphs 1 and 2, of its statute in order to further strengthen cooperation be-

tween the Commission and other bodies concerned with international law, having in mind the usefulness of such cooperation, and invites the Commission to provide the Sixth Committee with updated information in this regard at the fifty-fourth session of the General Assembly;

13. Notes that consulting with national organizations and individual experts concerned with international law may assist Governments in considering whether to make comments and observations on drafts submitted by the International Law Commission and in formulating their comments and observations;

14. Reaffirms its previous decisions concerning the role of the Codification Division of the Office of Legal Affairs of the Secretariat and those concerning the summary records and other documentation of the International Law Commission;

15. Takes note of the inclusion of information about the work of the International Law Commission in its web site;

16. Once again expresses the wish that seminars will continue to be held in conjunction with the sessions of the International Law Commission and that an increasing number of participants from developing countries will be given the opportunity to attend those seminars, appeals to States that can do so to make the voluntary contributions that are urgently needed for the holding of the seminars, and requests the Secretary-General to provide the seminars with adequate services, including interpretation, as required;

17. Requests the Secretary-General to forward to the International Law Commission, for its attention, the records of the debate on the report of the Commission at the fifty-third session of the General Assembly, together with such written statements as delegations may circulate in conjunction with their oral statements, and to prepare and distribute a topical summary of the debate, following established practice;

18. Notes with satisfaction the fiftieth anniversary of the International Law Commission, which was fittingly commemorated by a seminar held at Geneva on 21 and 22 April 1998 and by other events;

19. Recommends that the debate on the report of the International Law Commission at the fifty-fourth session of the General Assembly commence on 25 October 1999.

### State succession

ILC had before it the fourth report [A/CN.4/489] of the Special Rapporteur, Vaclav Mikulka (Czech Republic), on nationality in relation to the succession of States, which dealt with the second part of the topic, the nationality of legal persons in relation to the succession of States. Although the General Assembly had invited Governments to submit materials, including national legislation, decisions of national tribunals and diplomatic and official correspondence relevant to the topic, the documentation received mainly covered the problem of nationality of individuals in situations of State succession. In 1997 [YUN 1997, p. 1335], ILC adopted a draft preamble and a set of 27 draft articles on the issue and the Assembly, in

resolution 52/156 [ibid., p. 1334], again invited Governments to submit comments, but none were received.

The Special Rapporteur raised a number of questions on the orientation of the study and suggested that they be discussed in the framework of a working group, which ILC subsequently established. In its preliminary conclusions, the Working Group felt that the issues involved were too specific and the practical need for their solution was not evident. While the Working Group considered suggesting to the Commission that it not undertake work on the topic, it also considered it useful to examine alternative approaches. The Group agreed that there were two options for enlarging the scope of the issue: expansion beyond the context of the succession of States to the question of the nationality of legal persons in international law in general; or staying within the context of succession of States, expansion of the topic to include other questions, such as the status of legal persons (including rights and obligations inherent in the legal capacity of legal persons, specifically those determining the type of legal person) and, possibly, the conditions of operation of legal persons flowing from the succession of States. Under either option, ILC would have to decide which categories of legal persons should be covered, limitation of the study's review of legal relations, and the possible outcome of ILC's work on the issue.

In its report to the Assembly [A/53/10 & Corr.1], ILC stressed the desirability of obtaining States' comments, particularly from those that had undergone a succession, on how the nationality of legal persons was determined, and what kind of treatment was granted to those who became "foreign" legal persons as a result of succession.

### State responsibility

During its 1998 session, ILC considered comments and observations received from Governments [A/CN.4/488 & Add.1-3] on the draft articles on State responsibility, which had been provisionally adopted on first reading in 1996 [YUN 1996, p. 1207]. As at 20 July, replies had been received from 15 Governments. ILC also had before it the first report of the Special Rapporteur, James Crawford (Australia) [A/CN.4/490 & Add.1-7 & Add.2/Corr.1 & Add.4/Corr.1], which dealt with general issues relating to the draft, the distinction between "crimes" and "delictual responsibility", and articles 1 to 15 of Part One of the draft. ILC, having referred the draft articles to the Drafting Committee, took note of the Committee's report.

Following consideration of the first part of his report, the Special Rapporteur observed that

there was no general definitions clause in the draft articles, though implicit definitions, including that of State responsibility itself, were concealed in many places. Terminological questions were addressed in his report. Although the word "responsibility" was too deeply entrenched in the draft and in the doctrine to be changed, it needed an explanation, perhaps in the commentary.

### International liability

During its fiftieth session, ILC considered the first report on prevention of transboundary damage from hazardous activities [A/CN.4/487 & Add.I], submitted by the Special Rapporteur, Pemmaraju Sreenivasa Rao (India). In 1997 [YUN 1997, p. 1336], the Commission had decided to proceed with its work on the topic of "International liability for injurious consequences arising out of acts not prohibited by international law" by dealing first with the issue of prevention under the subtitle "Prevention of transboundary damage from hazardous activities". The report reviewed the Commission's work on the topic since 1978 and the scope of the draft articles to be elaborated, and analysed the procedural and substantive obligations that the general duty of prevention entailed.

In May, ILC decided to refer to the Drafting Committee draft articles 1 (a) (Activities to which the present articles apply) and 2 (Use of terms) recommended by the Commission's Working Group in 1996 [YUN 1996, p. 1206]. On the basis of the Working Group's revisions, the Special Rapporteur proposed a revised text for 15 draft articles, which was referred to the Drafting Committee. In August, ILC adopted on first reading a set of 17 draft articles on prevention of transboundary damage from hazardous activities, which were transmitted to Governments for comments and observations. Articles 3 to 17 dealt with: prevention; cooperation; implementation; relationship to other rules of international law; authorization; impact assessment; information to the public; notification and information; consultations on preventive measures; factors involved in an equitable balance of interests; procedures in the absence of notification; exchange of information; national security and industrial secrets; non-discrimination; and settlement of disputes.

The General Assembly, in **resolution 53/102** of 8 December, invited Governments to submit comments on the draft articles and requested ILC, while continuing its work on prevention, to examine other issues arising from the topic.

### Unilateral acts of States

At its 1998 session, ILC considered the first report on unilateral acts of States [A/CN.4/486] of Special Rapporteur Victor Rodríguez-Cedeno (Venezuela). The report was preliminary in nature, reflecting much of the doctrine, jurisprudence and State practice, as well as the comments that Governments had made in the Sixth Committee in 1997.

The discussion concentrated on the scope, definition and elements of unilateral acts; the approach to the topic; and the final form of ILC's work thereon. The Commission requested the Special Rapporteur to submit draft articles on the definition of unilateral acts and the scope of the draft articles and to proceed further with the examination of the topic, focusing on aspects concerning the elaboration and conditions of validity of those acts in the second report.

ILC also requested Governments' views on whether the scope of the topic should be limited to declarations or expanded to encompass other unilateral expressions of the will of the State, and whether the scope should be limited to unilateral acts of States issued to other States or extended to those issued to other subjects of international law.

### International State relations and international law

#### Principles for international negotiations

Pursuant to General Assembly resolution 52/155 [YUN 1997, p. 1344], the Secretary-General, in a report and later addendum [A/53/332 & Add.I], transmitted comments and proposals received from Kyrgyzstan, the Libyan Arab Jamahiriya, Mexico and Qatar on the draft guiding principles for international negotiations proposed by Mongolia for inclusion as a sub-item under the agenda item "United Nations Decade of International Law" [YUN 1997, p. 1343].

#### GENERAL ASSEMBLY ACTION

On 8 December [meeting 83], the General Assembly, on the recommendation of the Sixth Committee [A/53/630], **adopted resolution 53/101** without vote [agenda item 149].

#### Principles and guidelines for international negotiations

The General Assembly,  
Recalling the purposes and principles of the Charter of the United Nations,  
Reaffirming the provisions of the Declaration on Principles of International Law concerning Friendly

Relations and Cooperation among States in accordance with the Charter of the United Nations and of the Manila Declaration on the Peaceful Settlement of International Disputes,

Taking into account the objectives of the United Nations Decade of International Law,

Considering that international negotiations constitute a flexible and effective means for, among other things, the peaceful settlement of disputes among States and for the creation of new international norms of conduct,

Bearing in mind that in their negotiations States should be guided by the relevant principles and rules of international law,

Conscious of the existence of different means of peaceful settlement of disputes, as enshrined in the Charter and recognized by international law, and reaffirming, in this context, the right of free choice of those means,

Bearing in mind the important role that constructive and effective negotiations can play in attaining the purposes of the Charter by contributing to the management of international relations, the peaceful settlement of disputes and the creation of new international norms of conduct of States,

Noting that the identification of principles and guidelines of relevance to international negotiations could contribute to enhancing the predictability of negotiating parties, reducing uncertainty and promoting an atmosphere of trust at negotiations,

Recognizing that the following could offer a general, non-exhaustive frame of reference for negotiations,

1. Reaffirms the following principles of international law which are of relevance to international negotiations:

(a) Sovereign equality of all States, notwithstanding differences of an economic, social, political or other nature;

(b) States have the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter of the United Nations;

(c) States have the duty to fulfil in good faith their obligations under international law;

(d) States have the duty to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

(e) Any agreement is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter;

(f) States have the duty to cooperate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international cooperation free from discrimination based on such differences;

(g) States shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered;

2. Affirms the importance of conducting negotiations in accordance with international law in a manner compatible with and conducive to the achievement of

the stated objective of negotiations and in line with the following guidelines:

(a) Negotiations should be conducted in good faith;

(b) States should take due account of the importance of engaging, in an appropriate manner, in international negotiations the States whose vital interests are directly affected by the matters in question;

(c) The purpose and object of all negotiations must be fully compatible with the principles and norms of international law, including the provisions of the Charter;

(d) States should adhere to the mutually agreed framework for conducting negotiations;

(e) States should endeavour to maintain a constructive atmosphere during negotiations and to refrain from any conduct which might undermine the negotiations and their progress;

(f) States should facilitate the pursuit or conclusion of negotiations by remaining focused throughout on the main objectives of the negotiations;

(g) States should use their best endeavours to continue to work towards a mutually acceptable and just solution in the event of an impasse in negotiations.

### Jurisdictional immunities of States and their property

Pursuant to General Assembly resolution 52/151 [YUN 1997, p. 1344], States were invited to submit comments on a convention on jurisdictional immunities of States and their property for which ILC had drafted articles in 1991 [YUN 1991, p. 829]. The replies were presented by the Secretary-General in an August report and later addendum [A/53/274 & Add.1].

#### GENERAL ASSEMBLY ACTION

On 8 December [meeting 83], the General Assembly, on the recommendation of the Sixth Committee [A/53/629], adopted **resolution 53/98** without vote [agenda item 148].

#### Convention on jurisdictional immunities of States and their property

The General Assembly,

Taking note of the set of draft articles on jurisdictional immunities of States and their property adopted by the International Law Commission at its forty-third session, as well as the recommendation of the Commission that an international conference of plenipotentiaries be convened to examine the draft articles and to conclude a convention on the subject,

Recalling that, in its resolution 49/61 of 9 December 1994, it accepted the recommendation of the International Law Commission,

Recalling also that, in its resolution 52/151 of 15 December 1997, it decided to consider the subject again at its fifty-third session with a view to the establishment of a working group at its fifty-fourth session,

Reaffirming that the codification and progressive development of international law contributes to the implementation of the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations,

Having considered the report of the Secretary-General,

1. Decides to establish at its fifty-fourth session an open-ended working group of the Sixth Committee, open also to participation by States members of the specialized agencies, to consider outstanding substantive issues related to the draft articles on jurisdictional immunities of States and their property adopted by the International Law Commission, taking into account the recent developments of State practice and legislation and any other factors related to this issue since the adoption of the draft articles, as well as the comments submitted by States in accordance with paragraph 2 of resolution 49/61 and paragraph 2 of resolution 52/151, and to consider whether there are any issues identified by the working group upon which it would be useful to seek further comments and recommendations of the Commission;

2. Invites the International Law Commission to present any preliminary comments it may have regarding outstanding substantive issues related to the draft articles by 31 August 1999, in the light of the results of the informal consultations held pursuant to General Assembly decision 48/413 of 9 December 1993 and taking into account the recent developments of State practice and other factors related to this issue since the adoption of the draft articles, in order to facilitate the task of the working group;

3. Decides to include in the provisional agenda of its fifty-fourth session the item entitled "Convention on jurisdictional immunities of States and their property".

### Measures to eliminate terrorism

The Ad Hoc Committee established by General Assembly resolution 51/210 [YUN 1996, p. 1208] to elaborate an international convention for the suppression of terrorist bombings and, subsequently, an international convention for the suppression of acts of terrorism, as well as to address means of further developing a comprehensive legal framework of conventions dealing with international terrorism, held its second session in New York from 17 to 27 February 1998 [A/53/37]. The Assembly had adopted the International Convention for the Suppression of Terrorist Bombings by resolution 52/164 [YUN 1997, p. 1347].

In February, the Committee had before it the text of a draft convention for the suppression of acts of nuclear terrorism submitted by the Russian Federation. Introducing the draft, the Russian Federation highlighted the potential threats posed by nuclear terrorism and the need to take effective countermeasures against them. It was explained that existing international legal instruments were not sufficiently broad, either in their scope or in terms of the measures they provided, to counteract possible threats of nuclear terrorism and that the draft convention was intended to fill the gaps left by those instruments.

The Committee considered the definition of the material and offences to be covered under the proposed convention with a view to clarifying its

necessity, as well as its objectives and substantive scope. Without prejudice to the issue of whether a new convention should be developed, the Committee conducted a first reading of the substantive provisions containing elements specific to the draft convention or not identical to those found in relevant treaties. It also reviewed the preambular paragraphs and final provisions, as well as the remaining draft articles. Written and oral amendments and proposals were submitted.

The Foreign Ministers of Iran and the Russian Federation, following a meeting of 28 September, issued a joint statement supporting the conclusion of a convention for the suppression of acts of nuclear terrorism [A/C.6/53/6]. The two countries also supported the International Convention for the Suppression of Terrorist Bombings and five principles on deterring terrorism outlined in their joint statement.

In response to Assembly resolution 50/53 [YUN 1995, p. 1330], the Secretary-General issued an August report and later addendum on measures to eliminate international terrorism [A/53/314 & Corr.1,2 & Add.1]. The report provided responses from States and international organizations on steps taken to prevent and suppress international terrorism and information on incidents caused by international terrorism, as well as the status of relevant international legal instruments and recent developments in that area.

The Assembly, in resolution 52/165 [YUN 1997, p. 1346], had further recommended that the work of the Ad Hoc Committee continue during the Assembly's fifty-third session from 28 September to 9 October 1998, within the framework of a working group of the Sixth Committee, which subsequently decided to open the Working Group to Member States or members of specialized agencies or of the International Atomic Energy Agency. The Working Group held 13 meetings. A discussion paper was tabled before the Working Group for its consideration. On the basis of discussions on the draft text proposed by the Russian Federation and on written proposals and amendments, a new discussion paper was prepared for consideration by the Working Group. On 22 October, the Working Group issued its report [A/C.6/53/L.4].

Addressing the Assembly on 23 September, the French Foreign Minister proposed that the Assembly session should open discussions on an international convention for the suppression of terrorist financing. To that end, France, on 3 November [A/C.6/53/9], submitted a draft convention to the Sixth Committee that might serve as a basis for the Ad Hoc Committee's work, and suggested that discussions start in 1999 within the Ad Hoc Committee.



## GENERAL ASSEMBLY ACTION

On 8 December [meeting 83], the General Assembly, on the recommendation of the Sixth Committee [A/53/636], adopted **resolution 53/108** without vote [agenda item 155].

**Measures to eliminate international terrorism**

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling all its relevant resolutions, including resolution 49/60 of 9 December 1994, by which it adopted the Declaration on Measures to Eliminate International Terrorism, and resolutions 50/53 of 11 December 1995, 51/210 of 17 December 1996 and 52/165 of 15 December 1997,

Recalling also the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations,

Deeply disturbed by the persistence of terrorist acts, which have been carried out worldwide,

Stressing the need to strengthen further international cooperation between States and between international organizations and agencies, regional organizations and arrangements and the United Nations in order to prevent, combat and eliminate terrorism in all its forms and manifestations, wherever and by whomsoever committed,

Mindful of the need to enhance the role of the United Nations and the relevant specialized agencies in combating international terrorism, and of the proposals of the Secretary-General to enhance the role of the Organization in this respect,

Recalling that in the Declaration on Measures to Eliminate International Terrorism, contained in the annex to resolution 49/60, the General Assembly encouraged States to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there was a comprehensive legal framework covering all aspects of the matter,

Bearing in mind the possibility of considering in the near future the elaboration of a comprehensive convention on international terrorism,

Bearing in mind also that the Twelfth Conference of Heads of State or Government of Non-Aligned Countries, held at Durban, South Africa, from 29 August to 3 September 1998, reaffirmed its collective position on terrorism and as a recent initiative called for an international summit conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations,

Recognizing the urgent need to enhance international cooperation to prevent terrorist financing and to develop an appropriate legal instrument,

Having examined the report of the Secretary-General,

1. Strongly condemns all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomsoever committed;

2. Reiterates that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstances unjustifiable, whatever the considerations of a political, philosophical,

ideological, racial, ethnic, religious or other nature that may be invoked to justify them;

3. Reiterates its call upon all States to adopt further measures in accordance with the relevant provisions of international law, including international standards of human rights, to prevent terrorism and to strengthen international cooperation in combating terrorism and, to that end, to consider in particular the implementation of the measures set out in paragraphs 3 (a) to (f) of its resolution 51/210;

4. Also reiterates its call upon all States, with the aim of enhancing the efficient implementation of relevant legal instruments, to intensify, as and where appropriate, the exchange of information on facts related to terrorism and, in so doing, to avoid the dissemination of inaccurate or unverified information;

5. Reiterates its call upon States to refrain from financing, encouraging, providing training for or otherwise supporting terrorist activities;

6. Reaffirms that international cooperation as well as actions by States to combat terrorism should be conducted in conformity with the principles of the Charter of the United Nations, international law and relevant international conventions;

7. Urges all States that have not yet done so to consider, as a matter of priority, becoming parties to relevant conventions and protocols as referred to in paragraph 6 of resolution 51/210, as well as the International Convention for the Suppression of Terrorist Bombings, and calls upon all States to enact, as appropriate, domestic legislation necessary to implement the provisions of those conventions and protocols, to ensure that the jurisdiction of their courts enables them to bring to trial the perpetrators of terrorist acts, and to cooperate with and provide support and assistance to other States and relevant international and regional organizations to that end;

8. Reaffirms the Declaration on Measures to Eliminate International Terrorism contained in the annex to resolution 49/60 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism contained in the annex to resolution 51/210, and calls upon all States to implement them;

9. Takes note of the measures aimed at strengthening the capacity of the Centre for International Crime Prevention of the Secretariat to enhance international cooperation and improve the response of Governments to terrorism in all its forms and manifestations;

10. Decides to address at its fifty-fourth session the question of convening a high-level conference in 2000 under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations;

11. Decides also that the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 shall continue to elaborate a draft international convention for the suppression of acts of nuclear terrorism with a view to completing the instrument, shall elaborate a draft international convention for the suppression of terrorist financing to supplement related existing international instruments, and subsequently shall address means of further developing a comprehensive legal framework of conventions dealing with international terrorism, including consider-

ing, on a priority basis, the elaboration of a comprehensive convention on international terrorism;

12. Decides further that the Ad Hoc Committee shall meet from 15 to 26 March 1999, devoting appropriate time to the consideration of the outstanding issues relating to the elaboration of a draft international convention for the suppression of acts of nuclear terrorism, and that it shall initiate the elaboration of a draft international convention for the suppression of terrorist financing, and recommends that the work continue during the fifty-fourth session of the General Assembly from 27 September to 8 October 1999, within the framework of a working group of the Sixth Committee, and that the Ad Hoc Committee be convened in 2000 to continue its work as referred to in paragraph 11 above;

13. Requests the Secretary-General to continue to provide the Ad Hoc Committee with the necessary facilities for the performance of its work;

14. Requests the Ad Hoc Committee to report to the General Assembly at its fifty-third session in the event of the completion of the draft convention for the suppression of acts of nuclear terrorism;

15. Also requests the Ad Hoc Committee to report to the General Assembly at its fifty-fourth session on progress made in the implementation of its mandate;

16. Decides to include in the provisional agenda of its fifty-fourth session the item entitled "Measures to eliminate international terrorism".

### **Condemnation of terrorist attacks in Nairobi and Dar es Salaam**

On 13 August, the Security Council included in its agenda the item entitled "Threats to peace and security caused by international terrorist acts". The Council President, speaking on its behalf, expressed sympathy to the Governments and peoples of Kenya, the United Republic of Tanzania and the United States in connection with the tragedy each had suffered as a result of the bombings of the United States embassies in Nairobi and Dar es Salaam on 7 August, in which several UN staff members were also injured. The members of the Council condemned the terrorist acts against innocent civilians.

Kenya, speaking before the Council, expressed its outrage and condemnation of the terrorist bombings, which occurred almost simultaneously in Nairobi and Dar es Salaam. The bomb blast in Nairobi had so far claimed over 250 lives, and many other people were either in critical condition or unaccounted for. Nearly 5,000 had been treated for injuries suffered from the blast. The bombs had caused damage estimated at over \$500 million to property, including the complete destruction of a seven-storey building and damage to 67 other buildings. Those acts, in otherwise peaceful countries, exemplified the expanding reach and growing menace of the perpetrators of terrorist acts.

The United Republic of Tanzania appealed to the international community to assist it in the in-

vestigation and prosecution of those responsible. It condemned terrorist activities in all their forms, whether perpetrated by individual groups or by States, irrespective of the motivation.

The United States said the bombings underscored that terrorists knew no boundaries and that the suppression of international terrorism and the arrest, conviction and punishment of its perpetrators were essential to the maintenance of international peace and security. The United States would use all means at its disposal to track down and punish the perpetrators.

### **SECURITY COUNCIL ACTION**

On 13 August [meeting 3915], the Security Council unanimously adopted **resolution 1189(1998)**. The draft [S/1998/748] was prepared in consultations among Council members.

The Security Council,

Deeply disturbed by the indiscriminate and outrageous acts of international terrorism that took place on 7 August 1998 in Nairobi and Dar es Salaam,

Condemning such acts which have a damaging effect on international relations and jeopardize the security of States,

Convinced that the suppression of acts of international terrorism is essential for the maintenance of international peace and security, and reaffirming the determination of the international community to eliminate international terrorism in all its forms and manifestations,

Reaffirming the obligations of Member States under the Charter of the United Nations,

Stressing that every Member State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts,

Mindful of General Assembly resolution 52/164 of 15 December 1997 on the International Convention for the Suppression of Terrorist Bombings,

Recalling that, in the statement issued on 31 January 1992 on the occasion of the meeting of the Security Council at the level of heads of State and Government, the Council expressed its deep concern over acts of international terrorism, and emphasized the need for the international community to deal effectively with all such criminal acts,

Also stressing the need to strengthen international co-operation between States in order to adopt practical and effective measures to prevent, combat and eliminate all forms of terrorism affecting the international community as a whole,

Commending the responses of the Governments of Kenya, the United Republic of Tanzania and the United States of America to the terrorist bomb attacks in Kenya and the United Republic of Tanzania,

Determined to eliminate international terrorism,

1. Strongly condemns the terrorist bomb attacks in Nairobi and Dar es Salaam on 7 August 1998, which claimed hundreds of innocent lives, injured thousands of people and caused massive destruction to property;

2. Expresses to the families of the innocent victims of the terrorist bomb attacks during this difficult time its deep sorrow, sympathy and condolences;

3. Calls upon all States and international institutions to cooperate with and provide support and assistance to the ongoing investigations in Kenya, the United Republic of Tanzania and the United States of America to apprehend the perpetrators of these cowardly criminal acts and to bring them swiftly to justice;

4. Expresses its sincere gratitude to all States, international institutions and voluntary organizations for their encouragement and timely response to the requests for assistance from the Governments of Kenya and the United Republic of Tanzania, and urges them to assist the affected countries, especially in the reconstruction of infrastructure and disaster preparedness;

5. Calls upon all States to adopt, in accordance with international law and as a matter of priority, effective and practical measures for security cooperation, for the prevention of such acts of terrorism, and for the prosecution and punishment of their perpetrators;

6. Decides to remain seized of the matter.

The United States, in a 20 August letter to the Security Council President [S/1998/780], reported that it had exercised its right of self-defence, in accordance with Article 51 of the UN Charter, in responding to armed attacks against United States embassies and United States nationals. Having obtained convincing information that the organization of Osama bin Laden, based in Afghanistan and with support facilities in the Sudan, was responsible for the bombings of 7 August, United States armed forces, on 20 August, struck a facility being used to produce chemical weapons in the Sudan and terrorist training and base camps in Afghanistan. Those attacks were carried out only after repeated efforts to convince both Governments to terminate those activities.

In a 21 August letter [S/1998/786], the Sudan requested an urgent meeting of the Council to condemn the United States aggression (see p. 185). It stated that the aerial attack was on a factory producing medicines, and denied claims that it was used for making weapons. The Sudan said it regarded the attack as terrorist aggression and requested the Council to condemn the aggression, to hold the United States responsible for the human casualties and material damage and to send a technical mission of inquiry to establish the facts of the United States allegations. Further details of the attack on the pharmaceutical factory, in which many people were killed or injured and damage amounted to \$40 million, were provided by the Sudan in a letter of 22 August [S/1998/792].

By letters of 21 August to the Council President, Qatar [S/1998/790], on behalf of the Group of Islamic States, and Kuwait [S/1998/791], on behalf of the League of Arab States, endorsed the Sudan's requests for an urgent meeting of the

Council and for sending a fact-finding mission to the Sudan. The Islamic Group and the League of Arab States also endorsed the requests on 12 October [S/1998/942] and 24 November [S/1998/1120], respectively. Namibia, in a 25 August letter [S/1998/802], made the same requests on behalf of the Group of African States, as did Colombia on 25 August [S/1998/804], on behalf of the Movement of Non-Aligned Countries. In a 13 November letter to the Council President [S/1998/1069], the representative of the Sudan rejected United States arguments that a commission of inquiry would serve no purpose.

In the weeks that followed the attacks, a number of States or groups of States deplored the action by the United States against the pharmaceutical factory in the Sudan or complained of the action as a violation of its territorial integrity. Such views were expressed in letters to the Council President by: the summit of the Movement of Non-Aligned Countries (Durban, South Africa, 3 September) in a final declaration, the relevant paragraphs of which were transmitted by the Sudan [S/1998/879, A/C.6/53/2]; and the Council of the League of Arab States in resolutions forwarded by Lebanon [S/1998/800, S/1998/894] and a revised version forwarded by Yemen [S/1998/1120]. The Council of the League of Arab States [S/1998/800], while condemning terrorism in all its forms, drew a distinction between terrorism and the legitimate right of peoples to struggle against occupation.

The Sudan, in a series of letters to the Council [S/1998/793, 801, 880, 885, 888, 911, 937, 938, 1083, 1133] and the General Assembly [A/C.6/53/3-5], forwarded articles, many of them from the Western press, that indicated that the factory was not involved in manufacturing chemical weapons, that the United States Administration had based its decision on insufficient information or inference and/or that it had fabricated its claims without any supporting evidence. By a 15 December letter [S/1998/1168], the Sudan forwarded a study prepared by Michael Barletta, a senior research associate at the Monterey Institute of International Studies, California, United States, on United States allegations concerning the pharmaceutical factory destroyed by the air attack on 20 August. The study concluded that senior United States officials were shown to be ignorant of key facts at the time of their decision to bomb the plant.

In a 24 August letter to the Council President [S/1998/794], Pakistan said that the unilateral action by the United States against alleged terrorist sites in Afghanistan and the Sudan had entailed a violation of Pakistan's airspace. On 21 August, it had protested to the United States that missiles had overflowed the territory of Pakistan.

In a 24 August letter [A/53/285] to the Secretary-General, the Federal Republic of Yugoslavia, referring to the United States air strikes against Afghanistan and the Sudan, said that unilateral approaches to international terrorism were contrary to the principles of international relations.

### **Additional Protocols I and II to the 1949 Geneva Conventions**

In response to General Assembly resolution 51/155 [YUN 1996, p. 1211], the Secretary-General submitted an August report [A/53/287] on information received from Uruguay on the status of the two 1977 Protocols Additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of armed conflict [YUN 1977, p. 706]. Annexed to the report was a list of 153 States that had ratified or acceded to one or both of the Protocols as at 31 July.

#### **GENERAL ASSEMBLY ACTION**

On 8 December [meeting 83], the General Assembly, on the recommendation of the Sixth Committee [A/53/627], adopted **resolution 53/96** without vote [agenda item 146].

#### **Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts**

The General Assembly,

Recalling its resolutions 32/44 of 8 December 1977, 34/51 of 23 November 1979, 37/116 of 16 December 1982, 39/77 of 13 December 1984, 41/72 of 3 December 1986, 43/161 of 9 December 1988, 45/38 of 28 November 1990, 47/30 of 25 November 1992, 49/48 of 9 December 1994 and 51/155 of 16 December 1996,

Having considered the report of the Secretary-General on the status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts,

Convinced of the continuing value of established humanitarian rules relating to armed conflicts and the need to respect and ensure respect for these rules in all circumstances within the scope of the relevant international instruments, pending the earliest possible termination of such conflicts,

Stressing the possibility of making use of the International Fact-Finding Commission in relation to an armed conflict, pursuant to article 90 of Protocol I, and recalling that the International Fact-Finding Commission may, where necessary, facilitate, through its good offices, the restoration of an attitude of respect for the Conventions and the Protocol,

Stressing also the need for consolidating the existing body of international humanitarian law through its universal acceptance and the need for wide dissemination and full implementation of such law at the national level,

Mindful of the role of the International Committee of the Red Cross in offering protection to the victims of armed conflicts,

Noting with appreciation the continuing efforts of the International Committee of the Red Cross to promote and disseminate knowledge of international humanitarian law, in particular the Geneva Conventions of 1949 and the two additional Protocols,

Noting that the Twenty-sixth International Conference of the Red Cross and Red Crescent endorsed the recommendations of the Intergovernmental Group of Experts on the Protection of War Victims, including the recommendation that the depositary of the Geneva Conventions of 1949 should organize periodic meetings of States parties to the Conventions to consider general problems regarding the application of international humanitarian law,

Acknowledging the fact that the Rome Statute of the International Criminal Court, adopted on 17 July 1998, includes the most serious crimes of international concern under international humanitarian law, and that the Statute, while recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for such crimes, shows the determination of the international community to put an end to impunity for the perpetrators of such crimes and thus to contribute to their prevention,

Taking note of the analytical report of the Secretary-General on minimum humanitarian standards submitted to the Commission on Human Rights at its fifty-fourth session,

Noting that international humanitarian law has been an important topic during the United Nations Decade of International Law, which will come to a close in 1999, fifty years after the adoption of the Geneva Conventions, and that the importance of this body of law will be highlighted in the context of the celebration in 1999 at The Hague and at St. Petersburg of the centennial of the first International Peace Conference,

1. Appreciates the virtually universal acceptance of the Geneva Conventions of 1949, and notes the trend towards a similarly wide acceptance of the two additional Protocols of 1977;

2. Appeals to all States parties to the Geneva Conventions of 1949 that have not yet done so to consider becoming parties to the additional Protocols at the earliest possible date;

3. Calls upon all States that are already parties to Protocol I, or those States not parties, on becoming parties to Protocol I, to make the declaration provided for under article 90 of that Protocol;

4. Calls upon all States parties to the additional Protocols to ensure their wide dissemination and full implementation;

5. Affirms the necessity of making the implementation of international humanitarian law more effective;

6. Welcomes the advisory service activities of the International Committee of the Red Cross in supporting efforts undertaken by Member States to take legislative and administrative action to implement international humanitarian law and in promoting the exchange of information on those efforts between Governments;

7. Welcomes also the holding in January 1998 of the first periodic meeting on the application of international humanitarian law;

8. Notes the holding in October 1998 of the meeting of experts on general problems of the implementation of the fourth Geneva Convention;

9. Requests the Secretary-General to submit to the General Assembly at its fifty-fifth session a report on the status of the additional Protocols, as well as measures taken to strengthen the existing body of international humanitarian law, inter alia, with respect to its dissemination and full implementation at the national level, based on information received from Member States and the International Committee of the Red Cross;

10. Decides to include in the provisional agenda of its fifty-fifth session the item entitled "Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts".

## Diplomatic relations

### Protection of diplomatic and consular missions and representatives

As at 31 December 1998, the number of parties to the various international instruments relating to the protection of diplomats and diplomatic and consular relations was as follows: 178 States were parties to the 1961 Vienna Convention on Diplomatic Relations [YUN 1961, p. 512], 48 States were parties to the Optional Protocol concerning acquisition of nationality [ibid., p. 516], and 61 States were parties to the Optional Protocol concerning the compulsory settlement of disputes [ibid.].

The 1963 Vienna Convention on Consular Relations [YUN 1963, p. 510] had 161 parties, with the Libyan Arab Jamahiriya and Qatar acceding in 1998; 36 States were parties to the Optional Protocol concerning acquisition of nationality [ibid., p. 512]; and 44 States were parties to the Optional Protocol concerning the compulsory settlement of disputes [ibid.].

The 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents [YUN 1973, p. 775], had 100 States parties, with Cuba, Mauritania and Uzbekistan acceding and the former Yugoslav Republic of Macedonia succeeding in 1998.

**Report of Secretary-General.** In accordance with General Assembly resolution 51/156 [YUN 1996, p. 1212], the Secretary-General invited Member States to communicate their views on measures to enhance the protection, security and safety of diplomatic and consular missions and representatives as provided for in Assembly resolution 42/154 [YUN 1987, p. 1068]. In an August report [A/53/276 & Corr.1], the Secretary-General presented the texts and analytical summary of the information received.

One violation was reported by a State in 1998. In connection with four reported cases in respect of which no information had been received within a reasonable period of time, the Secretary-General addressed reminders to the States concerned.

**ILC action.** The Special Rapporteur on diplomatic protection, Mohamed Bennouna (Morocco), issued a preliminary report on the subject in February 1998 [A/CN.4/484], which was considered by ILC at its fiftieth session [A/53/10 & Corr.1]. The report raised a number of basic issues underlying the topic and on which the Special Rapporteur sought the views of ILC. The issues were divided into two broad categories: the legal nature of diplomatic protection and the nature of the rules governing diplomatic protection.

On 22 May, following a lengthy debate, ILC established an open-ended working group, chaired by the Special Rapporteur, to consider possible conclusions that might be drawn on the basis of the discussion as to the approach to the topic and also to provide direction in respect of issues that should be covered in the second report of the Special Rapporteur for the next ILC session. The Working Group held two meetings, on 25 and 26 May, at which it agreed, in respect of the approach to the topic, that the customary law approach to diplomatic protection should form the basis for ILC work on the topic. The topic would deal with secondary rules of international law relating to diplomatic protection, while primary rules would be considered only when their clarification was essential to providing guidance. Primary rules were defined as obligations of States in particular areas of their relations, and secondary rules were obligations of States that arose from the breach of primary rules, such as the right to reparation. The Working Group also agreed that the exercise of diplomatic protection was the right of the State; in the exercise of that right, the State should take into account the rights and interests of its nationals for whom it was exercising diplomatic protection. The work on diplomatic protection should take into account the development of international law in increasing recognition and protection of the rights of individuals and in providing them with more access to international forums to enforce their rights. The Working Group, noting that some domestic laws had recognized the right of their nationals to diplomatic protection by their Governments, expressed the view that the discretionary right of the State to exercise diplomatic protection did not prevent it from committing itself to its nationals to exercise such a right. The Working Group said it would be useful to request Governments to provide ILC with the most sig-

niflant national legislation, decisions by domestic courts and State practice relevant to diplomatic protection.

The Working Group recalled the 1997 decision of ILC [YUN 1997, p. 1353] to complete the first reading of the topic by the end of the current quinquennium. With regard to the second report of the Special Rapporteur, the Working Group suggested that it should concentrate on the issues raised in Chapter One, "Basis for diplomatic protection", of the outline adopted by the previous year's Working Group.

On 9 June, ILC considered and endorsed the recommendations of the Working Group.

The General Assembly, in **resolution 53/102** of 8 December, invited Governments to submit relevant national legislation, decisions of domestic courts and State practice relevant to diplomatic protection in order to assist ILC in its work on the topic (see above).

#### GENERAL ASSEMBLY ACTION

On 8 December [meeting 83], the General Assembly, on the recommendation of the Sixth Committee [A/53/628], adopted **resolution 53/97** without Vote [agenda item 147].

#### **Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives**

The General Assembly,

Having considered the reports of the Secretary-General,

Conscious of the need to develop and strengthen friendly relations and cooperation among States,

Convinced that respect for the principles and rules of international law governing diplomatic and consular relations is a basic prerequisite for the normal conduct of relations among States and for the fulfilment of the purposes and principles of the Charter of the United Nations,

Alarmed by the recent acts of violence against diplomatic and consular representatives, as well as against representatives of international intergovernmental organizations and officials of such organizations, which have endangered or taken innocent lives and seriously impeded the normal work of such representatives and officials,

Expressing sympathy for the victims of such illegal acts,

Welcoming the Security Council resolutions and statements by the President of the Security Council in relation to flagrant violations of the protection, security and safety of diplomatic and consular missions and representatives, as well as missions and representatives of international intergovernmental organizations and officials of such organizations,

Concerned at the failure to respect the inviolability of diplomatic and consular missions and representatives,

Recalling that, without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State,

Recalling also that diplomatic and consular premises must not be used in any manner incompatible with the diplomatic or consular functions,

Emphasizing the duty of States to take all appropriate measures as required by international law, including measures of a preventive nature, and to bring offenders to justice,

Welcoming measures already taken by States to that end in conformity with their international obligations,

Convinced that the role of the United Nations, which includes the reporting procedures established under General Assembly resolution 35/168 of 15 December 1980 and further elaborated in subsequent Assembly resolutions, is important in promoting efforts to enhance the protection, security and safety of diplomatic and consular missions and representatives,

1. Takes note of the reports of the Secretary-General;

2. Strongly condemns acts of violence against diplomatic and consular missions and representatives, as well as against missions and representatives of international intergovernmental organizations and officials of such organizations, and emphasizes that such acts can never be justified;

3. Also strongly condemns the recent acts of violence against such missions, representatives and officials, referred to in relevant reports under this item;

4. Urges States to strictly observe, implement and enforce the principles and rules of international law governing diplomatic and consular relations and, in particular, to ensure, in conformity with their international obligations, the protection, security and safety of the missions, representatives and officials mentioned in paragraph 2 above officially present in territories under their jurisdiction, including practical measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize or engage in the perpetration of acts against the security and safety of such missions, representatives and officials;

5. Also urges States to take all necessary measures at the national and international levels to prevent any acts of violence against the missions, representatives and officials mentioned in paragraph 2 above and to ensure, with the participation of the United Nations, where appropriate, that such acts are fully investigated with a view to bringing offenders to justice;

6. Recommends that States cooperate closely through, inter alia, contacts between the diplomatic and consular missions and the receiving State with regard to practical measures designed to enhance the protection, security and safety of diplomatic and consular missions and representatives and with regard to the exchange of information on the circumstances of all serious violations thereof;

7. Urges States to take all appropriate measures in accordance with international law, at the national and international levels, to prevent any abuse of diplomatic or consular privileges and immunities, in particular serious abuses, including those involving acts of violence;

8. Recommends that States cooperate closely with the State in whose territory abuses of diplomatic and consular privileges and immunities may have occurred, including by exchanging information and providing assistance to its juridical authorities in order to bring offenders to justice;

9. Calls upon States that have not yet done so to consider becoming parties to the instruments relevant to the protection, security and safety of diplomatic and consular missions and representatives;

10. Also calls upon States, in cases where a dispute arises in connection with a violation of their international obligations concerning the protection of the missions or the security of the representatives and officials mentioned in paragraph 2 above, to make use of the means for the peaceful settlement of disputes, including the good offices of the Secretary-General, and requests the Secretary-General, when he deems it appropriate, to offer his good offices to the States directly concerned;

11. Requests all States to report to the Secretary-General in accordance with paragraph 9 of resolution 42/154 of 7 December 1987;

12. Requests the Secretary-General to issue a report on the item, in accordance with paragraph 12 of resolution 42/154, containing also an analytical summary of the reports received under paragraph 11 above, on an annual basis, as well as to proceed with his other tasks pursuant to the same resolution;

13. Decides to include in the provisional agenda of its fifty-fifth session the item entitled "Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives".

## Treaties and agreements

### Reservations to treaties

In 1998, ILC considered the third report of Special Rapporteur Alain Pellet (France) on the law and practice relating to reservations to treaties. It dealt mainly with the definition of reservations (and interpretative declarations) to treaties [A/CN.4/491 & Add.1-6 & Add.2/Corr.1 & Add.4/Corr.1 & Add.6/Corr.1]. ILC, having referred a number of draft guidelines to the Drafting Committee, adopted its report on several draft guidelines, including those on definition and object of reservations, instances in which reservations might be formulated, relation between the definition and the permissibility of reservations, reservations formulated when notifying territorial application, joint formulation, and reservations with territorial scope. Texts of those draft guidelines with commentaries were provisionally adopted.

### Treaties involving international organizations

The 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations [YUN 1986, p. 1006], which had not yet entered into force, had 25 States parties as at 31 December 1998.

### Registration and publication of treaties by the United Nations

During 1998, 1,589 international agreements and 1,116 subsequent actions were received by the Secretariat for registration or filing and recording. In addition, there were 1,343 registrations or formalities concerning agreements for which the Secretary-General performed depositary functions.

The texts of international agreements registered or filed and recorded were published in the United Nations Treaty Series in the original languages, with translations into English and French where necessary. In 1998, the following volumes of the Treaty Series covering treaties registered or filed and recorded in 1979, 1980, 1982, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994 and 1995 were issued:

1121, 1199/1200, 1269, 1396, 1397, 1436, 1455, 1485, 1488, 1490, 1495, 1499, 1500, 1502, 1510, 1513, 1516, 1517, 1520, 1523, 1526, 1527/1528, 1530, 1532, 1536, 1537, 1538, 1539, 1540, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550, 1551, 1552, 1554, 1555, 1556, 1558, 1560, 1562, 1564, 1565, 1567, 1569, 1570, 1572, 1574, 1575, 1579, 1580, 1588, 1592, 1593, 1594, 1595, 1605, 1636, 1647, 1649, 1651, 1665, 1668, 1708, 1713, 1718, 1745, 1755, 1756, 1757, 1758, 1759, 1793, 1794, 1795, 1796, 1797, 1798, 1799, 1800, 1801, 1802, 1803, 1804, 1805, 1806, 1807, 1808, 1809, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1826, 1836, 1837, 1838, 1839, 1840, 1845, 1846, 1847, 1848, 1859.

Volumes 22 and 23 of the Cumulative Index to the UN Treaty Series were published in English and French in 1998.

### Multilateral treaties

In response to General Assembly resolution 52/153 [YUN 1997, p. 1371], the Secretary-General issued an October note [A/53/525] listing the titles of treaties appearing in the publication *Multilateral Treaties Deposited with the Secretary-General*.

The UN Treaty Series (approximately 1500 printed volumes) and the regularly updated status of multilateral treaties deposited with the Secretary-General were available on the Internet at the UN Treaty Collection web site ([www.un.org/depts/treaty](http://www.un.org/depts/treaty)). In 1998, the text of recent multilateral treaties deposited with the Secretary-General and the list of titles of all the multilateral treaties deposited were added to the site in the six official languages.

### New multilateral treaties concluded under UN auspices

The following treaties, concluded under UN auspices, were deposited with the Secretary-General during 1998:

Rome Statute of the International Criminal Court, adopted at Rome on 17 July 1998

Protocol on the Privileges and Immunities of the International Seabed Authority, adopted by the Assembly of the International Seabed Authority in Kingston, Jamaica, on 27 March 1998

Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, adopted at Tampere, Finland, on 18 June 1998

Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, adopted at Aarhus, Denmark, on 25 June 1998

Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, adopted at Rotterdam, Netherlands, on 10 September 1998

#### Multilateral treaties deposited with the Secretary-General

The number of multilateral treaties for which the Secretary-General performed depositary functions stood at 502 at the end of 1998. During the year, 308 signatures were affixed to treaties for which he performed depositary functions and 794 instruments of ratification, accession, acceptance and approval or notification were

transmitted to him. In addition, he received 878 communications from States expressing observations or declarations and reservations made at the time of signature, ratification or accession.

The following multilateral treaties in respect of which the Secretary-General acted as depositary came into force in 1998:

Additional Protocol to the 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, "Protocol on Blinding Laser Weapons (Protocol IV)", adopted by the Conference of the States Parties to the Convention at its eighth plenary meeting on 13 October 1995

Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II as amended on 3 May 1996) annexed to the 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, adopted by the Conference of the States Parties to the Convention at Geneva on 3 May 1996

Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Further Reduction of Sulphur Emissions, concluded at Oslo on 14 June 1994

Convention on Customs Treatment of Pool Containers Used in International Transport, concluded at Geneva on 21 January 1994