



# INTERNATIONAL LAW FELLOWSHIP PROGRAMME

The Hague, The Netherlands

24 June – 2 August 2013



## STUDY MATERIALS PART I

Codification Division of the United Nations Office of Legal Affairs



## INTERNATIONAL LAW FELLOWSHIP PROGRAMME

The Hague, The Netherlands  
24-27 June 2013

### INTRODUCTION TO INTERNATIONAL LAW PROFESSOR EMMANUEL ROUCOUNAS

Codification Division of the United Nations Office of Legal Affairs

**INTRODUCTION TO INTERNATIONAL LAW**  
**PROFESSOR EMMANUEL ROUCOUNAS**

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**Legal instruments and documents**

1. United Nations Charter, 1945  
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2. Universal Declaration of Human Rights, (United Nations General Assembly resolution 217 (III) A of 10 December 1948) 6
3. Vienna Convention on the Law of Treaties, 1969  
For text, see *The Work of the International Law Commission*, 8th ed., vol. II, p. 116
4. Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (United Nations General Assembly resolution 2625 (XXV) of 24 October 1970, annex) 16
5. Manila Declaration on the Peaceful Settlement of International Disputes (United Nations General Assembly resolution 37/10 of 15 November 1982) 21
6. Definition of Aggression (United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974) 25
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**Case Law**

8. *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, I.C.J. Reports 1949, p. 174 (excerpts) 32
9. *Military and Paramilitary Activities in and against Nicaragua*, (*Nicaragua v. United States of America*), Merits, Judgment, I.C.J. Reports 1986, p. 14 (excerpts) 35
10. *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226 (excerpts) 44

**Legal writings [Documents not reproduced in electronic version]**

11. Robert Y. Jennings, “What is International Law and How Do We Tell It When We See It?”, *Schweizerisches Jahrbuch für Internationales Recht*, 1981, pp. 59-88
12. Mahnoush H. Arsanjani and W. Michael Reisman, “The Quest for an International Liability Regime for the Protection of the Global Commons”, *International Law:*

*Theory and Practice. Essays in Honour of Eric Suy*, K. Wellens (ed.), The Hague, Martinus Nijhoff Publishers, 1988, pp. 469-492

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17. Pierre-Marie Dupuy, “A Doctrinal Debate in the Globalization Era: On the ‘Fragmentation’ of International Law”, *European Journal of Legal Studies*, Vol. 1, 2007, pp. 1-19
18. David Kennedy, “One, Two, Three, Many Legal Orders: Legal Pluralism and the Cosmopolitan Dream”, *NYU Review of Law & Social Change*, Vol. 31, 2007, pp. 641-659
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21. V. I. Kuznetsov, B. R. Tuzmukhamedov (eds.), *International Law - A Russian Introduction*, Utrecht, Eleven International Publishing, 2009, pp. 1-35
22. Rosalyn Higgins, “The Identity of International Law”, *Themes and Theories, Selected Essays*, Oxford, Oxford University Press, 2010, pp. 91-107
23. Ahmed Mahiou, “International Law of Development”, *Max Planck Encyclopedia of Public International Law*, Oxford, Oxford University Press, available at [www.mpepil.com](http://www.mpepil.com), 2013

## **INTRODUCTION TO INTERNATIONAL LAW**

### **COURSE OUTLINE**

#### **PROFESSOR EMMANUEL ROUCOUNAS**

The international community (or society) and the main characteristics of its normative structure. The role of States. International organizations and foremost the United Nations. Other public and private : “subjects, actors, participants and users” of international law. The cardinal principles of cooperation and non-use of force.

The difficult co-existence between organization and decentralization. The basis of rights and obligations under international law. Law and Politics. Law and Ethics. International law and international relations.

Lessons from the history of international law. The place of theory: Schools of thought, movements and tendencies: positivism, jus naturalism, socially oriented approaches, realism, pragmatism, constitutionalism and other “isms”. West and East. Voices of the South.

Worksites producing international law: international conferences and international organizations, the importance of the United Nations System, bilateral meetings. Negotiation, expertise, and agreement. The emerging international civil society.

The final product: preponderance of treaty law, the relevance of custom, a place for general principles of law, the jurisprudence of international and domestic courts, teachings, unilateral acts of states, soft law and contemplations regarding relativism.

The relationship between international and domestic law. Constitutional provisions and application of international law by domestic organs.

International law is everywhere: the debate over its unity, universality, vacuums and contradictions. The price of rapid expansion of international normativity and the claims of fragmentation.

State sovereignty in the twenty-first century. The quest for democratization, governance, and management of public common goods.

**Universal Declaration of Human Rights  
(United Nations General Assembly resolution 217 (III) A of  
10 December 1948)**

*4. Requests* the United Nations International Children's Emergency Fund, as the United Nations agency entrusted with special responsibility for meeting emergency needs of children in many parts of the world :

(a) To assist in the conduct of national campaigns for the benefit of the International Children's Emergency Fund, with a view to providing international co-ordination of voluntary governmental and non-governmental appeals for the benefit of children;

(b) To report concerning the appeals to the ninth session of the Economic and Social Council and to the fourth regular session of the General Assembly.

*Hundred and seventy-seventh plenary meeting,  
8 December 1948.*

### **216 (III). Advisory social welfare services**

#### *The General Assembly,*

*Having considered* resolution 155 (VII) of the Economic and Social Council of 13 August 1948 on advisory social welfare services,

*Approves* the provisions of that resolution.

*Hundred and seventy-seventh plenary meeting,  
8 December 1948.*

### **217 (III). International Bill of Human Rights**

#### **A**

#### **UNIVERSAL DECLARATION OF HUMAN RIGHTS**

#### **PREAMBLE**

*Whereas* recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

*Whereas* disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

*Whereas* it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

*Whereas* it is essential to promote the development of friendly relations between nations,

*4. Invite* le Fonds international de secours à l'enfance de l'Organisation des Nations Unies en sa qualité d'institution de l'Organisation des Nations Unies spécialement chargée de pourvoir aux pressants besoins des enfants dans de nombreuses parties du monde;

a) A contribuer à l'organisation de campagnes nationales en faveur du Fonds international de secours à l'enfance, afin d'assurer la coordination internationale des appels gouvernementaux et non gouvernementaux bénévoles en faveur de l'enfance;

b) À faire rapport sur les résultats des appels à la neuvième session du Conseil économique et social ainsi qu'à la quatrième session ordinaire de l'Assemblée générale.

*Cent-soixante-dix-septième séance plénière,  
le 8 décembre 1948.*

### **216 (III). Fonctions consultatives en matière de service social**

#### *L'Assemblée générale,*

*Ayant examiné* la résolution 155 (VII) du Conseil économique et social, en date du 13 août 1948, relative aux fonctions consultatives en matière de service social,

*Approuve* les dispositions de ladite résolution.

*Cent-soixante-dix-septième séance plénière,  
le 8 décembre 1948.*

### **217 (III). Charte internationale des droits de l'homme**

#### **A**

#### **DÉCLARATION UNIVERSELLE DES DROITS DE L'HOMME**

#### **PRÉAMBULE**

*Considérant* que la reconnaissance de la dignité inhérente à tous les membres de la famille humaine et de leurs droits égaux et inaliénables constitue le fondement de la liberté, de la justice et de la paix dans le monde,

*Considérant* que la méconnaissance et le mépris des droits de l'homme ont conduit à des actes de barbarie qui révoltent la conscience de l'humanité et que l'avènement d'un monde où les êtres humains seront libres de parler et de croire, libérés de la terreur et de la misère, a été proclamé comme la plus haute aspiration de l'homme,

*Considérant* qu'il est essentiel que les droits de l'homme soient protégés par un régime de droit pour que l'homme ne soit pas contraint, en suprême recours, à la révolte contre la tyrannie et l'oppression,

*Considérant* qu'il est essentiel d'encourager le développement de relations amicales entre nations,

*Whereas* the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

*Whereas* Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

*Whereas* a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

*Now, therefore,*

#### *The General Assembly*

*Proclaims* this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

#### **ARTICLE 1**

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

#### **ARTICLE 2**

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

#### **ARTICLE 3**

Everyone has the right to life, liberty and the security of person.

*Considérant* que dans la Charte les peuples des Nations Unies ont proclamé à nouveau leur foi dans les droits fondamentaux de l'homme, dans la dignité et la valeur de la personne humaine, dans l'égalité des droits des hommes et des femmes, et qu'ils se sont déclarés résolus à favoriser le progrès social et à instaurer de meilleures conditions de vie dans une liberté plus grande,

*Considérant* que les États Membres se sont engagés à assurer, en coopération avec l'Organisation des Nations Unies, le respect universel et effectif des droits de l'homme et des libertés fondamentales,

*Considérant* qu'une conception commune de ces droits et libertés est de la plus haute importance pour remplir pleinement cet engagement,

#### *L'Assemblée générale*

*Proclame* la présente Déclaration universelle des droits de l'homme comme l'idéal commun à atteindre par tous les peuples et toutes les nations afin que tous les individus et tous les organes de la société, ayant cette Déclaration constamment à l'esprit, s'efforcent, par l'enseignement et l'éducation, de développer le respect de ces droits et libertés et d'en assurer, par des mesures progressives d'ordre national et international, la reconnaissance et l'application universelles et effectives, tant parmi les populations des États Membres eux-mêmes que parmi celles des territoires placés sous leur juridiction.

#### **ARTICLE PREMIER**

Tous les êtres humains naissent libres et égaux en dignité et en droits. Ils sont doués de raison et de conscience et doivent agir les uns envers les autres dans un esprit de fraternité.

#### **ARTICLE 2**

Chacun peut se prévaloir de tous les droits et de toutes les libertés proclamés dans la présente Déclaration, sans distinction aucune, notamment de race, de couleur, de sexe, de langue, de religion, d'opinion politique ou de toute autre opinion, d'origine nationale ou sociale, de fortune, de naissance ou de toute autre situation.

De plus, il ne sera fait aucune distinction fondée sur le statut politique, juridique ou international du pays ou du territoire dont une personne est ressortissante, que ce pays ou territoire soit indépendant, sous tutelle, non autonome ou soumis à une limitation quelconque de souveraineté.

#### **ARTICLE 3**

Tout individu a droit à la vie, à la liberté et à la sûreté de sa personne.

#### ARTICLE 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

#### ARTICLE 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

#### ARTICLE 6

Everyone has the right to recognition everywhere as a person before the law.

#### ARTICLE 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

#### ARTICLE 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

#### ARTICLE 9

No one shall be subjected to arbitrary arrest, detention or exile.

#### ARTICLE 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

#### ARTICLE 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

#### ARTICLE 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the pro-

#### ARTICLE 4

Nul ne sera tenu en esclavage ni en servitude; l'esclavage et la traite des esclaves sont interdits sous toutes leurs formes.

#### ARTICLE 5

Nul ne sera soumis à la torture, ni à des peines ou traitements cruels, inhumains ou dégradants.

#### ARTICLE 6

Chacun a le droit à la reconnaissance en tous lieux de sa personnalité juridique.

#### ARTICLE 7

Tous sont égaux devant la loi et ont droit sans distinction à une égale protection de la loi. Tous ont droit à une protection égale contre toute discrimination qui violerait la présente Déclaration et contre toute provocation à une telle discrimination.

#### ARTICLE 8

Toute personne a droit à un recours effectif devant les juridictions nationales compétentes contre les actes violant les droits fondamentaux qui lui sont reconnus par la constitution ou par la loi.

#### ARTICLE 9

Nul ne peut être arbitrairement arrêté, détenu ni exilé.

#### ARTICLE 10

Toute personne a droit, en pleine égalité, à ce que sa cause soit entendue équitablement et publiquement par un tribunal indépendant et impartial, qui décidera, soit de ses droits et obligations, soit du bien fondé de toute accusation en matière pénale dirigée contre elle.

#### ARTICLE 11

1. Toute personne accusée d'un acte délictueux est présumée innocente jusqu'à ce que sa culpabilité ait été légalement établie au cours d'un procès public où toutes les garanties nécessaires à sa défense lui auront été assurées.

2. Nul ne sera condamné pour des actions ou omissions qui, au moment où elles ont été commises, ne constituaient pas un acte délictueux d'après le droit national ou international. De même, il ne sera infligé aucune peine plus forte que celle qui était applicable au moment où l'acte délictueux a été commis.

#### ARTICLE 12

Nul ne sera l'objet d'immixtions arbitraires dans sa vie privée, sa famille, son domicile ou sa correspondance, ni d'atteintes à son honneur et à sa réputation. Toute personne a droit à la

tection of the law against such interference or attacks.

#### ARTICLE 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

#### ARTICLE 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

#### ARTICLE 15

1. Everyone has the right to a nationality.  
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

#### ARTICLE 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

#### ARTICLE 17

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

#### ARTICLE 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

#### ARTICLE 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to

protection de la loi contre de telles immixtions ou de telles atteintes.

#### ARTICLE 13

1. Toute personne a le droit de circuler librement et de choisir sa résidence à l'intérieur d'un État.

2. Toute personne a le droit de quitter tout pays, y compris le sien, et de revenir dans son pays.

#### ARTICLE 14

1. Devant la persécution, toute personne a le droit de chercher asile et de bénéficier de l'asile en d'autres pays.

2. Ce droit ne peut être invoqué dans le cas de poursuites réellement fondées sur un crime de droit commun ou sur des agissements contraires aux buts et aux principes des Nations Unies.

#### ARTICLE 15

1. Tout individu a droit à une nationalité.  
2. Nul ne peut être arbitrairement privé de sa nationalité, ni du droit de changer de nationalité.

#### ARTICLE 16

1. A partir de l'âge nubile, l'homme et la femme, sans aucune restriction quant à la race, la nationalité ou la religion, ont le droit de se marier et de fonder une famille. Ils ont des droits égaux au regard du mariage, durant le mariage et lors de sa dissolution.

2. Le mariage ne peut être conclu qu'avec le libre et plein consentement des futurs époux.

3. La famille est l'élément naturel et fondamental de la société et a droit à la protection de la société et de l'État.

#### ARTICLE 17

1. Toute personne, aussi bien seule qu'en collectivité, a droit à la propriété.

2. Nul ne peut être arbitrairement privé de sa propriété.

#### ARTICLE 18

Toute personne a droit à la liberté de pensée, de conscience et de religion; ce droit implique la liberté de changer de religion ou de conviction ainsi que la liberté de manifester sa religion ou sa conviction, seule ou en commun, tant en public qu'en privé, par l'enseignement, les pratiques, le culte et l'accomplissement des rites.

#### ARTICLE 19

Tout individu a droit à la liberté d'opinion et d'expression, ce qui implique le droit de ne

**hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.**

#### **ARTICLE 20**

**1. Everyone has the right to freedom of peaceful assembly and association.**

**2. No one may be compelled to belong to an association.**

#### **ARTICLE 21**

**1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.**

**2. Everyone has the right of equal access to public service in his country.**

**3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.**

#### **ARTICLE 22**

**Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.**

#### **ARTICLE 23**

**1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.**

**2. Everyone, without any discrimination, has the right to equal pay for equal work.**

**3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.**

**4. Everyone has the right to form and to join trade unions for the protection of his interests.**

#### **ARTICLE 24**

**Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.**

**pas être inquiété pour ses opinions et celui de chercher, de recevoir et de répandre, sans considérations de frontières, les informations et les idées par quelque moyen d'expression que ce soit.**

#### **ARTICLE 20**

**1. Toute personne a droit à la liberté de réunion et d'association pacifiques.**

**2. Nul ne peut être obligé de faire partie d'une association.**

#### **ARTICLE 21**

**1. Toute personne a le droit de prendre part à la direction des affaires publiques de son pays, soit directement, soit par l'intermédiaire de représentants librement choisis.**

**2. Toute personne a droit à accéder, dans des conditions d'égalité, aux fonctions publiques de son pays.**

**3. La volonté du peuple est le fondement de l'autorité des pouvoirs publics; cette volonté doit s'exprimer par des élections honnêtes qui doivent avoir lieu périodiquement, au suffrage universel égal et au vote secret ou suivant une procédure équivalente assurant la liberté du vote.**

#### **ARTICLE 22**

**Toute personne, en tant que membre de la société, a droit à la sécurité sociale; elle est fondée à obtenir la satisfaction des droits économiques, sociaux et culturels indispensables à sa dignité et au libre développement de sa personnalité, grâce à l'effort national et à la coopération internationale, compte tenu de l'organisation et des ressources de chaque pays.**

#### **ARTICLE 23**

**1. Toute personne a droit au travail, au libre choix de son travail, à des conditions équitables et satisfaisantes de travail et à la protection contre le chômage.**

**2. Tous ont droit, sans aucune discrimination, à un salaire égal pour un travail égal.**

**3. Quiconque travaille a droit à une rémunération équitable et satisfaisante lui assurant ainsi qu'à sa famille une existence conforme à la dignité humaine et complétée, s'il y a lieu, par tous autres moyens de protection sociale.**

**4. Toute personne a le droit de fonder avec d'autres des syndicats et de s'affilier à des syndicats pour la défense de ses intérêts.**

#### **ARTICLE 24**

**Toute personne a droit au repos et aux loisirs et notamment à une limitation raisonnable de la durée du travail et à des congés payés périodiques.**

## ARTICLE 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

## ARTICLE 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

## ARTICLE 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

## ARTICLE 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

## ARTICLE 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

## ARTICLE 25

1. Toute personne a droit à un niveau de vie suffisant pour assurer sa santé, son bien-être et ceux de sa famille, notamment pour l'alimentation, l'habillement, le logement, les soins médicaux ainsi que pour les services sociaux nécessaires; elle a droit à la sécurité en cas de chômage, de maladie, d'invalidité, de veuvage, de vieillesse ou dans les autres cas de perte de ses moyens de subsistance par suite de circonstances indépendantes de sa volonté.

2. La maternité et l'enfance ont droit à une aide et à une assistance spéciales. Tous les enfants, qu'ils soient nés dans le mariage ou hors mariage, jouissent de la même protection sociale.

## ARTICLE 26

1. Toute personne a droit à l'éducation. L'éducation doit être gratuite, au moins en ce qui concerne l'enseignement élémentaire et fondamental. L'enseignement élémentaire est obligatoire. L'enseignement technique et professionnel doit être généralisé; l'accès aux études supérieures doit être ouvert en pleine égalité à tous en fonction de leur mérite.

2. L'éducation doit viser au plein épanouissement de la personnalité humaine et au renforcement du respect des droits de l'homme et des libertés fondamentales. Elle doit favoriser la compréhension, la tolérance et l'amitié entre toutes les nations et tous les groupes raciaux ou religieux, ainsi que le développement des activités des Nations Unies pour le maintien de la paix.

3. Les parents ont, par priorité, le droit de choisir le genre d'éducation à donner à leurs enfants.

## ARTICLE 27

1. Toute personne a le droit de prendre part librement à la vie culturelle de la communauté, de jouir des arts et de participer au progrès scientifique et aux bienfaits qui en résultent.

2. Chacun a droit à la protection des intérêts moraux et matériels découlant de toute production scientifique, littéraire ou artistique dont il est l'auteur.

## ARTICLE 28

Toute personne a droit à ce que règne, sur le plan social et sur le plan international, un ordre tel que les droits et libertés énoncés dans la présente Déclaration puissent y trouver plein effet.

## ARTICLE 29

1. L'individu a des devoirs envers la communauté dans laquelle seule le libre et plein développement de sa personnalité est possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

#### ARTICLE 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

*Hundred and eighty-third plenary meeting,  
10 December 1948.*

#### B RIGHT OF PETITION

*The General Assembly,*

*Considering* that the right of petition is an essential human right, as is recognized in the Constitutions of a great number of countries,

*Having considered* the draft article on petitions in document A/C.3/306 and the amendments offered thereto by Cuba and France,

*Decides* not to take any action on this matter at the present session;

*Requests* the Economic and Social Council to ask the Commission on Human Rights to give further examination to the problem of petitions when studying the draft covenant on human rights and measures of implementation, in order to enable the General Assembly to consider what further action, if any, should be taken at its next regular session regarding the problem of petitions.

*Hundred and eighty-third plenary meeting,  
10 December 1948.*

#### C FATE OF MINORITIES

*The General Assembly,*

*Considering* that the United Nations cannot remain indifferent to the fate of minorities,

*Considering* that it is difficult to adopt a uniform solution of this complex and delicate question, which has special aspects in each State in which it arises,

2. Dans l'exercice de ses droits et dans la jouissance de ses libertés, chacun n'est soumis qu'aux limitations établies par la loi exclusivement en vue d'assurer la reconnaissance et le respect des droits et libertés d'autrui et afin de satisfaire aux justes exigences de la morale, de l'ordre public et du bien-être général dans une société démocratique.

3. Ces droits et libertés ne pourront, en aucun cas, s'exercer contrairement aux buts et aux principes des Nations Unies.

#### ARTICLE 30

Aucune disposition de la présente Déclaration ne peut être interprétée comme impliquant pour un État, un groupement ou un individu un droit quelconque de se livrer à une activité ou d'accomplir un acte visant à la destruction des droits et libertés qui y sont énoncés.

*Cent-quatre-vingt-troisième séance plénière,  
le 10 décembre 1948.*

#### B DROIT DE PÉTITION

*L'Assemblée générale,*

*Considérant* que le droit de pétition est un des droits essentiels de l'homme, comme le reconnaissent les constitutions de nombreux pays,

*Ayant examiné* le projet d'article relatif aux pétitions qui figure dans le document A/C.3/306 et les amendements à cet article déposés par Cuba et la France,

*Décide* de ne prendre aucune mesure à ce sujet au cours de la présente session;

*Prie* le Conseil économique et social d'inviter la Commission des droits de l'homme à procéder à un nouvel examen du problème des pétitions lorsqu'elle examinera le projet de pacte relatif aux droits de l'homme et aux mesures de mise en œuvre, afin que l'Assemblée générale puisse, au cours de sa prochaine session ordinaire, examiner quelles mesures doivent être prises, s'il y a lieu d'en prendre, en ce qui concerne le problème des pétitions.

*Cent-quatre-vingt-troisième séance plénière,  
le 10 décembre 1948*

#### C SORT DES MINORITÉS

*L'Assemblée générale,*

*Considérant* que les Nations Unies ne peuvent pas demeurer indifférentes au sort des minorités,

*Considérant* qu'il est difficile d'adopter une solution uniforme de cette question complexe et délicate qui revêt des aspects particuliers dans chaque État où elle se pose,

*Considering* the universal character of the Declaration of Human Rights,

*Decides* not to deal in a specific provision with the question of minorities in the text of this Declaration;

*Refers* to the Economic and Social Council the texts submitted by the delegations of the Union of Soviet Socialist Republics, Yugoslavia and Denmark on this subject contained in document A/C.3/307/Rev. 2, and requests the Council to ask the Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities to make a thorough study of the problem of minorities, in order that the United Nations may be able to take effective measures for the protection of racial, national, religious or linguistic minorities.

*Hundred and eighty-third plenary meeting.  
16 December 1948.*

## D

### PUBLICITY TO BE GIVEN TO THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

*The General Assembly,*

*Considering* that the adoption of the Universal Declaration of Human Rights is an historic act, destined to consolidate world peace through the contribution of the United Nations towards the liberation of individuals from the unjustified oppression and constraint to which they are too often subjected,

*Considering* that the text of the Declaration should be disseminated among all peoples throughout the world,

1. *Recommends* Governments of Member States to show their adherence to Article 56 of the Charter by using every means within their power solemnly to publicize the text of the Declaration and to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories;

2. *Requests* the Secretary-General to have this Declaration widely disseminated and, to that end, to publish and distribute texts, not only in the official languages, but also, using every means at his disposal, in all languages possible;

3. *Invites* the specialized agencies and non-governmental organizations of the world to do their utmost to bring this Declaration to the attention of their members.

*Hundred and eighty-third plenary meeting.  
19 December 1948.*

*Considérant* le caractère universel de la Déclaration des droits de l'homme,

*Décide* de ne pas traiter par une disposition spécifique dans le corps de cette Déclaration la question des minorités;

*Renvoie* au Conseil économique et social les textes soumis par les délégations de l'Union des Républiques socialistes soviétiques, de la Yougoslavie et du Danemark sur cette question dans le document A/C.3/307/Rev. 2, et prie le Conseil d'inviter la Commission des droits de l'homme et la Sous-Commission de la lutte contre les mesures discriminatoires et de la protection des minorités à procéder à un examen approfondi du problème des minorités, afin que l'Organisation des Nations Unies puisse adopter des mesures efficaces de protection des minorités raciales, nationales, religieuses et linguistiques.

*Cent-quatre-vingt-troisième séance plénière,  
le 10 décembre 1948.*

## D

### PUBLICITÉ A DONNER À LA DÉCLARATION UNIVERSELLE DES DROITS DE L'HOMME

*L'Assemblée générale,*

*Considérant* que le vote de la Déclaration universelle des droits de l'homme est un acte historique, destiné à affirmer la paix mondiale en faisant contribuer l'Organisation des Nations Unies à libérer l'individu de l'oppression et des contraintes illégitimes dont il est trop souvent victime,

*Considérant* que le texte de la Déclaration doit avoir une diffusion de caractère vraiment populaire et universel,

1. *Recommande* aux Gouvernements des États Membres de manifester leur fidélité à l'Article 56 de la Charte, en ne négligeant aucun des moyens en leur pouvoir pour publier solennellement le texte de la Déclaration et, ensuite, pour faire en sorte qu'il soit distribué, affiché, lu et commenté principalement dans les écoles et autres établissements d'enseignement, sans distinction fondée sur le statut politique des pays ou des territoires;

2. *Prie* le Secrétaire général de donner à cette Déclaration une très large diffusion et, à ces fins, de publier et faire distribuer les textes non seulement dans les langues officielles, mais encore, dans la mesure de ses moyens, dans toutes les langues possibles;

3. *Invite* les institutions spécialisées et les organisations non gouvernementales du monde à bien vouloir faire leur possible pour porter cette Déclaration à la connaissance de leurs membres.

*Cent-quatre-vingt-troisième séance plénière,  
le 10 décembre 1948.*

F

PREPARATION OF A DRAFT COVENANT ON  
HUMAN RIGHTS AND DRAFT MEASURES  
OF IMPLEMENTATION

*The General Assembly,*

*Considering* that the plan of work of the Commission on Human Rights provides for an International Bill of Human Rights, to include a Declaration, a Covenant on Human Rights and measures of implementation,

*Requests* the Economic and Social Council to ask the Commission on Human Rights to continue to give priority in its work to the preparation of a draft Covenant on Human Rights and draft measures of implementation.

*Hundred and eighty-third plenary meeting,  
10 December 1948.*

E

PREPARATION D'UN PROJET DE PACTE  
RELATIF AUX DROITS DE L'HOMME ET  
DE MESURES DE MISE EN ŒUVRE

*L'Assemblée générale,*

*Considérant* que le plan de travail de la Commission des droits de l'homme prévoit l'élaboration d'une charte internationale des droits de l'homme, qui devra comprendre une Déclaration, un Pacte relatif aux droits de l'homme et des mesures de mise en œuvre;

*Invite* le Conseil économique et social à demander à la Commission des droits de l'homme de continuer à donner la priorité, dans son plan de travail, à la préparation d'un projet de pacte relatif aux droits de l'homme et à l'élaboration des mesures de mise en œuvre.

*Cent-quatre-vingt-troisième séance plénière,  
le 10 décembre 1948.*

**Declaration on Principles of International Law concerning  
Friendly Relations and Co-operation among States in  
accordance with the Charter of the United Nations  
(United Nations General Assembly resolution 2625 (XXV) of  
24 October 1970, annex)**

## RESOLUTIONS ADOPTED ON THE REPORTS OF THE SIXTH COMMITTEE

### C O N T E N T S

| <i>Resolution<br/>No.</i> | <i>Title</i>   | <i>Item</i> | <i>Date of<br/>adoption</i> | <i>Page</i> |
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| 2644 (XXV)                | Report of the Special Committee on the Question of Defining Aggression (A/8171) .....  | 87          | 25 November 1970            | 126         |
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|                           | Progressive development and codification of the rules of international law relating to international watercourses .....  | 91          | 8 December 1970             | 129         |
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|                           | Aerial hijacking or interference with civil air travel .....   | 99          | 25 November 1970            | 129         |

**2625 (XXV). Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations**

*The General Assembly,*

Recalling its resolutions 1815 (XVII) of 18 December 1962, 1966 (XVIII) of 16 December 1963, 2103 (XX) of 20 December 1965, 2181 (XXI) of 12 December 1966, 2327 (XXII) of 18 December 1967, 2463 (XXIII) of 20 December 1968 and 2533 (XXIV) of 8 December 1969, in which it affirmed the importance of the progressive development and codification of the principles of international law concerning friendly relations and co-operation among States,

Having considered the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States,<sup>1</sup> which met in Geneva from 31 March to 1 May 1970,

Emphasizing the paramount importance of the Charter of the United Nations for the maintenance of international peace and security and for the development of friendly relations and co-operation among States,

*Deeply convinced* that the adoption of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations on the occasion of the twenty-fifth anniversary of the United Nations would contribute to the strengthening of world peace and constitute a landmark in the development of international law and of relations among States, in promoting the rule of law among nations and particularly the universal application of the principles embodied in the Charter,

*Considering* the desirability of the wide dissemination of the text of the Declaration,

1. *Approves* the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the text of which is annexed to the present resolution;

2. *Expresses its appreciation* to the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States for its work resulting in the elaboration of the Declaration;

3. *Recommends* that all efforts be made so that the Declaration becomes generally known.

<sup>1</sup> Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 18 (A/8018).

## ANNEX

**DECLARATION ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS**

## PREAMBLE

*The General Assembly,*

*Reaffirming* in the terms of the Charter of the United Nations that the maintenance of international peace and security and the development of friendly relations and co-operation between nations are among the fundamental purposes of the United Nations,

*Recalling* that the peoples of the United Nations are determined to practise tolerance and live together in peace with one another as good neighbours,

*Bearing in mind* the importance of maintaining and strengthening international peace founded upon freedom, equality, justice and respect for fundamental human rights and of developing friendly relations among nations irrespective of their political, economic and social systems or the levels of their development,

*Bearing in mind also* the paramount importance of the Charter of the United Nations in the promotion of the rule of law among nations,

*Considering* that the faithful observance of the principles of international law concerning friendly relations and co-operation among States and the fulfilment in good faith of the obligations assumed by States, in accordance with the Charter, is of the greatest importance for the maintenance of international peace and security and for the implementation of the other purposes of the United Nations,

*Noting* that the great political, economic and social changes and scientific progress which have taken place in the world since the adoption of the Charter give increased importance to these principles and to the need for their more effective application in the conduct of States wherever carried on,

*Recalling* the established principle that outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means, and mindful of the fact that consideration is being given in the United Nations to the question of establishing other appropriate provisions similarly inspired,

*Convinced* that the strict observance by States of the obligation not to intervene in the affairs of any other State is an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to the creation of situations which threaten international peace and security,

*Recalling* the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State,

*Considering* it essential that all States shall 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,

*Considering* it equally essential that all States shall settle their international disputes by peaceful means in accordance with the Charter,

*Reaffirming*, in accordance with the Charter, the basic importance of sovereign equality and stressing that the purposes of the United Nations can be implemented only if States enjoy sovereign equality and comply fully with the requirements of this principle in their international relations,

*Convinced* that the subjection of peoples to alien subjugation, domination and exploitation constitutes a major obstacle to the promotion of international peace and security,

*Convinced* that the principle of equal rights and self-determination of peoples constitutes a significant contribution to

contemporary international law, and that its effective application is of paramount importance for the promotion of friendly relations among States, based on respect for the principle of sovereign equality,

*Convinced* in consequence that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter,

*Considering* the provisions of the Charter as a whole and taking into account the role of relevant resolutions adopted by the competent organs of the United Nations relating to the content of the principles,

*Considering* that the progressive development and codification of the following principles:

(a) The principle that States shall 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,

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

(c) The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter,

(d) The duty of States to co-operate with one another in accordance with the Charter,

(e) The principle of equal rights and self-determination of peoples,

(f) The principle of sovereign equality of States,

(g) The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter, so as to secure their more effective application within the international community, would promote the realization of the purposes of the United Nations,

*Having considered* the principles of international law relating to friendly relations and co-operation among States,

1. *Solemnly proclaims* the following principles:

*The principle that States shall 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*

Every State has the duty to refrain in its 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. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues.

A war of aggression constitutes a crime against the peace, for which there is responsibility under international law.

In accordance with the purposes and principles of the United Nations, States have the duty to refrain from propaganda for wars of aggression.

Every State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States.

Every State likewise has the duty to refrain from the threat or use of force to violate international lines of demarcation, such as armistice lines, established by or pursuant to an international agreement to which it is a party or which it is otherwise bound to respect. Nothing in the foregoing shall be construed as prejudicing the positions of the parties concerned with regard to the status and effects of such lines under their special régimes or as affecting their temporary character.

States have a duty to refrain from acts of reprisal involving the use of force.

Every State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence.

Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.

Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force.

The territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter. The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal. Nothing in the foregoing shall be construed as affecting:

(a) Provisions of the Charter or any international agreement prior to the Charter régime and valid under international law; or

(b) The powers of the Security Council under the Charter.

All States shall pursue in good faith negotiations for the early conclusion of a universal treaty on general and complete disarmament under effective international control and strive to adopt appropriate measures to reduce international tensions and strengthen confidence among States.

All States shall comply in good faith with their obligations under the generally recognized principles and rules of international law with respect to the maintenance of international peace and security, and shall endeavour to make the United Nations security system based on the Charter more effective.

Nothing in the foregoing paragraphs shall be construed as enlarging or diminishing in any way the scope of the provisions of the Charter concerning cases in which the use of force is lawful.

*The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered*

Every State shall settle its international disputes with other States by peaceful means in such a manner that international peace and security and justice are not endangered.

States shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice. In seeking such a settlement the parties shall agree upon such peaceful means as may be appropriate to the circumstances and nature of the dispute.

The parties to a dispute have the duty, in the event of failure to reach a solution by any one of the above peaceful means, to continue to seek a settlement of the dispute by other peaceful means agreed upon by them.

States parties to an international dispute, as well as other States, shall refrain from any action which may aggravate the situation so as to endanger the maintenance of international peace and security, and shall act in accordance with the purposes and principles of the United Nations.

International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means. Recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with sovereign equality.

Nothing in the foregoing paragraphs prejudices or derogates from the applicable provisions of the Charter, in

particular those relating to the pacific settlement of international disputes.

*The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter*

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.

No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State, or interfere in civil strife in another State.

The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.

Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.

Nothing in the foregoing paragraphs shall be construed as affecting the relevant provisions of the Charter relating to the maintenance of international peace and security.

*The duty of States to co-operate with one another in accordance with the Charter*

States have the duty to co-operate 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 co-operation free from discrimination based on such differences.

To this end:

(a) States shall co-operate with other States in the maintenance of international peace and security;

(b) States shall co-operate in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all, and in the elimination of all forms of racial discrimination and all forms of religious intolerance;

(c) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and non-intervention;

(d) States Members of the United Nations have the duty to take joint and separate action in co-operation with the United Nations in accordance with the relevant provisions of the Charter.

States should co-operate in the economic, social and cultural fields as well as in the field of science and technology and for the promotion of international cultural and educational progress. States should co-operate in the promotion of economic growth throughout the world, especially that of the developing countries.

*The principle of equal rights and self-determination of peoples*

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights

and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:

(a) To promote friendly relations and co-operation among States; and

(b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned;

and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.

Every State has the duty to promote through joint and separate action universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter.

The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.

The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles.

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.

#### *The principle of sovereign equality of States*

All States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature.

In particular, sovereign equality includes the following elements:

(a) States are juridically equal;

(b) Each State enjoys the rights inherent in full sovereignty;

(c) Each State has the duty to respect the personality of other States;

(d) The territorial integrity and political independence of the State are inviolable;

(e) Each State has the right freely to choose and develop its political, social, economic and cultural systems;

(f) Each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States.

*The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter*

Every State has the duty to fulfil in good faith the obligations assumed by it in accordance with the Charter of the United Nations.

Every State has the duty to fulfil in good faith its obligations under the generally recognized principles and rules of international law.

Every State has the duty to fulfil in good faith its obligations under international agreements valid under the generally recognized principles and rules of international law.

Where obligations arising under international agreements are in conflict with the obligations of Members of the United Nations under the Charter of the United Nations, the obligations under the Charter shall prevail.

#### **GENERAL PART**

##### *2. Declares that:*

In their interpretation and application the above principles are interrelated and each principle should be construed in the context of the other principles.

Nothing in this Declaration shall be construed as prejudicing in any manner the provisions of the Charter or the rights and duties of Member States under the Charter or the rights of peoples under the Charter, taking into account the elaboration of these rights in this Declaration.

##### *3. Declares further that:*

The principles of the Charter which are embodied in this Declaration constitute basic principles of international law, and consequently appeals to all States to be guided by these principles in their international conduct and to develop their mutual relations on the basis of the strict observance of these principles.

#### **2634 (XXV). Report of the International Law Commission**

##### *The General Assembly,*

*Having considered* the report of the International Law Commission on the work of its twenty-second session,<sup>2</sup>

*Emphasizing* the need for the further codification and progressive development of international law in order to make it a more effective means of implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations and to give increased importance to its role in relations among nations,

*Noting with satisfaction* that at its twenty-second session the International Law Commission completed its provisional draft articles on relations between States and international organizations, continued the consideration of matters concerning the codification and progressive development of the international law relating to succession of States in respect of treaties and State responsibility and included in its programme of work the question of treaties concluded between States and international organizations or between two or more international organizations, as recommended by the General Assembly in resolution 2501 (XXIV) of 12 November 1969,

*Noting further* that the International Law Commission has proposed to hold a fourteen-week session in 1971 in order to enable it to complete the second reading of the draft articles on relations between States

<sup>2</sup> *Ibid.*, Supplement No. 10 (A/8010/Rev.1).

**Manila Declaration on the Peaceful Settlement of  
International Disputes**  
**(United Nations General Assembly resolution 37/10 of  
15 November 1982)**

## IX. RESOLUTIONS ADOPTED ON THE REPORTS OF THE SIXTH COMMITTEE<sup>1</sup>

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### C O N T E N T S

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**37/10. Manila Declaration on the Peaceful Settlement of International Disputes<sup>2</sup>**

*The General Assembly,*

*Having examined the item entitled "Peaceful settlement of disputes between States",*

*Recalling its resolutions 34/102 of 14 December 1979, 35/160 of 15 December 1980 and 36/110 of 10 December 1981,*

*Reaffirming the need to exert utmost efforts in order to settle any conflicts and disputes between States exclusively*

by peaceful means and to avoid any military action and hostilities, which can only make more difficult the solution of those conflicts and disputes,

*Considering that the question of the peaceful settlement of disputes should represent one of the central concerns for States and for the United Nations and that the efforts to strengthen the process of the peaceful settlement of disputes should be continued,*

*Convinced that the adoption of the Manila Declaration on the Peaceful Settlement of International Disputes should enhance the observance of the principle of peaceful settlement of disputes in relations between States and contribute to the elimination of the danger of recourse to force or to the threat of force, to the relaxation of international tensions, to the promotion of a policy of co-operation and peace and*

<sup>1</sup> For the decisions adopted on the reports of the Sixth Committee, see sect. X.B.8.

<sup>2</sup> See also sect. X.B.8, decision 37/407.

of respect for the independence and sovereignty of all States, to the enhancing of the role of the United Nations in preventing conflicts and settling them peacefully and, consequently, to the strengthening of international peace and security,

*Considering* the need to ensure a wide dissemination of the text of the Declaration,

1. *Approves* the Manila Declaration on the Peaceful Settlement of International Disputes, the text of which is annexed to the present resolution;

2. *Expresses its appreciation* to the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization for its important contribution to the elaboration of the text of the Declaration;

3. *Requests* the Secretary-General to inform the Governments of the States Members of the United Nations or members of specialized agencies, the Security Council and the International Court of Justice of the adoption of the Declaration;

4. *Urges* that all efforts be made so that the Declaration becomes generally known and fully observed and implemented.

*68th plenary meeting  
15 November 1982*

#### ANNEX

##### **Manila Declaration on the Peaceful Settlement of International Disputes**

###### *The General Assembly,*

*Reaffirming* the principle of the Charter of the United Nations that all States shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

*Conscious* that the Charter of the United Nations embodies the means and an essential framework for the peaceful settlement of international disputes, the continuance of which is likely to endanger the maintenance of international peace and security.

*Recognizing* the important role of the United Nations and the need to enhance its effectiveness in the peaceful settlement of international disputes and the maintenance of international peace and security, in accordance with the principles of justice and international law, in conformity with the Charter of the United Nations,

*Reaffirming* the principle of the Charter of the United Nations that all States shall 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,

*Reiterating* that no State or group of States has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State,

*Reaffirming* the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.<sup>3</sup>

*Bearing in mind* the importance of maintaining and strengthening international peace and security and the development of friendly relations among States, irrespective of their political, economic and social systems or levels of economic development,

*Reaffirming* the principle of equal rights and self-determination of peoples as enshrined in the Charter of the United Nations and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and in other relevant resolutions of the General Assembly,

*Stressing* the need for all States to desist from any forcible action which deprives peoples, particularly peoples under colonial and racist régimes or other forms of alien domination, of their inalienable right to self-determination, freedom and independence, as referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

*Mindful* of existing international instruments as well as respective principles and rules concerning the peaceful settlement of international disputes, including the exhaustion of local remedies whenever applicable,

*Determined* to promote international co-operation in the political field and to encourage the progressive development of international law and its codification, particularly in relation to the peaceful settlement of international disputes,

*Solemnly declares* that:

I

1. All States shall act in good faith and in conformity with the purposes and principles enshrined in the Charter of the United Nations with a view to avoiding disputes among themselves likely to affect friendly relations among States, thus contributing to the maintenance of international peace and security. They shall live together in peace with one another as good neighbours and strive for the adoption of meaningful measures for strengthening international peace and security.

2. Every State shall settle its international disputes exclusively by peaceful means in such a manner that international peace and security, and justice, are not endangered.

3. International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means in conformity with obligations under the Charter of the United Nations and with the principles of justice and international law. Recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with the sovereign equality of States.

4. States parties to a dispute shall continue to observe in their mutual relations their obligations under the fundamental principles of international law concerning the sovereignty, independence and territorial integrity of States, as well as other generally recognized principles and rules of contemporary international law.

5. States shall seek in good faith and in a spirit of co-operation an early and equitable settlement of their international disputes by any of the following means: negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional arrangements or agencies or other peaceful means of their own choice, including good offices. In seeking such a settlement, the parties shall agree on such peaceful means as may be appropriate to the circumstances and the nature of their dispute.

6. States parties to regional arrangements or agencies shall make every effort to achieve pacific settlement of their local disputes through such regional arrangements or agencies before referring them to the Security Council. This does not preclude States from bringing any dispute to the attention of the Security Council or of the General Assembly in accordance with the Charter of the United Nations.

7. In the event of failure of the parties to a dispute to reach an early solution by any of the above means of settlement, they shall continue to seek a peaceful solution and shall consult forthwith on mutually agreed means to settle the dispute peacefully. Should the parties fail to settle by any of the above means a dispute the continuance of which is likely to endanger the maintenance of international peace and security, they shall refer it to the Security Council in accordance with the Charter of the United Nations and without prejudice to the functions and powers of the Council set forth in the relevant provisions of Chapter VI of the Charter.

8. States parties to an international dispute, as well as other States, shall refrain from any action whatsoever which may aggravate the situation so as to endanger the maintenance of international peace and security and make more difficult or impede the peaceful settlement of the dispute, and shall act in this respect in accordance with the purposes and principles of the United Nations.

9. States should consider concluding agreements for the peaceful settlement of disputes among them. They should also include in bilateral agreements and multilateral conventions to be concluded, as appropriate, effective provisions for the peaceful settlement of disputes arising from the interpretation or application thereof.

10. States should, without prejudice to the right of free choice of means, bear in mind that direct negotiations are a flexible and effective means of peaceful settlement of their disputes. When they choose to resort to direct negotiations, States should negotiate meaningfully, in order to arrive at an early settlement acceptable to the parties. States should be equally prepared to seek the settlement of their disputes by the other means mentioned in the present Declaration.

11. States shall in accordance with international law implement in good faith all the provisions of agreements concluded by them for the settlement of their disputes.

<sup>3</sup> Resolution 2625 (XXV), annex.

12. In order to facilitate the exercise by the peoples concerned of the right to self-determination as referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the parties to a dispute may have the possibility, if they agree to do so and as appropriate, to have recourse to the relevant procedures mentioned in the present Declaration, for the peaceful settlement of the dispute.

13. Neither the existence of a dispute nor the failure of a procedure of peaceful settlement of disputes shall permit the use of force or threat of force by any of the States parties to the dispute.

## II

1. Member States should make full use of the provisions of the Charter of the United Nations, including the procedures and means provided for therein, particularly Chapter VI, concerning the peaceful settlement of disputes.

2. Member States shall fulfil in good faith the obligations assumed by them in accordance with the Charter of the United Nations. They should, in accordance with the Charter, as appropriate, duly take into account the recommendations of the Security Council relating to the peaceful settlement of disputes. They should also, in accordance with the Charter, as appropriate, duly take into account the recommendations adopted by the General Assembly, subject to Articles 11 and 12 of the Charter, in the field of peaceful settlement of disputes.

3. Member States reaffirm the important role conferred on the General Assembly by the Charter of the United Nations in the field of peaceful settlement of disputes and stress the need for it to discharge effectively its responsibilities. Accordingly, they should:

(a) Bear in mind that the General Assembly may discuss any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations and, subject to Article 12 of the Charter, recommend measures for its peaceful adjustment;

(b) Consider making use, when they deem it appropriate, of the possibility of bringing to the attention of the General Assembly any dispute or any situation which might lead to international friction or give rise to a dispute;

(c) Consider utilizing, for the peaceful settlement of their disputes, the subsidiary organs established by the General Assembly in the performance of its functions under the Charter;

(d) Consider, when they are parties to a dispute brought to the attention of the General Assembly, making use of consultations within the framework of the Assembly, with a view to facilitating an early settlement of their dispute.

4. Member States should strengthen the primary role of the Security Council so that it may fully and effectively discharge its responsibilities, in accordance with the Charter of the United Nations, in the area of the settlement of disputes or of any situation the continuance of which is likely to endanger the maintenance of international peace and security. To this end they should:

(a) Be fully aware of their obligation to refer to the Security Council such a dispute to which they are parties if they fail to settle it by the means indicated in Article 33 of the Charter;

(b) Make greater use of the possibility of bringing to the attention of the Security Council any dispute or any situation which might lead to international friction or give rise to a dispute;

(c) Encourage the Security Council to make wider use of the opportunities provided for by the Charter in order to review disputes or situations the continuance of which is likely to endanger the maintenance of international peace and security;

(d) Consider making greater use of the fact-finding capacity of the Security Council in accordance with the Charter;

(e) Encourage the Security Council to make wider use, as a means to promote peaceful settlement of disputes, of the subsidiary organs established by it in the performance of its functions under the Charter;

(f) Bear in mind that the Security Council may, at any stage of a dispute of the nature referred to in Article 33 of the Charter or of a situation of like nature, recommend appropriate procedures or methods of adjustment;

(g) Encourage the Security Council to act without delay, in accordance with its functions and powers, particularly in cases where international disputes develop into armed conflicts.

5. States should be fully aware of the role of the International Court of Justice, which is the principal judicial organ of the United Nations. Their attention is drawn to the facilities offered by the International

Court of Justice for the settlement of legal disputes, especially since the revision of the Rules of the Court.

States may entrust the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

States should bear in mind:

(a) That legal disputes should as a general rule be referred by the parties to the International Court of Justice, in accordance with the provisions of the Statute of the Court;

(b) That it is desirable that they:

(i) Consider the possibility of inserting in treaties, whenever appropriate, clauses providing for the submission to the International Court of Justice of disputes which may arise from the interpretation or application of such treaties;

(ii) Study the possibility of choosing, in the free exercise of their sovereignty, to recognize as compulsory the jurisdiction of the International Court of Justice in accordance with Article 36 of its Statute;

(iii) Review the possibility of identifying cases in which use may be made of the International Court of Justice.

The organs of the United Nations and the specialized agencies should study the advisability of making use of the possibility of requesting advisory opinions of the International Court of Justice on legal questions arising within the scope of their activities, provided that they are duly authorized to do so.

Recourse to judicial settlement of legal disputes, particularly referral to the International Court of Justice, should not be considered an unfriendly act between States.

6. The Secretary-General should make full use of the provisions of the Charter of the United Nations concerning the responsibilities entrusted to him. The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security. He shall perform such other functions as are entrusted to him by the Security Council or by the General Assembly. Reports in this connection shall be made whenever requested to the Security Council or the General Assembly.

*Urges all States to observe and promote in good faith the provisions of the present Declaration in the peaceful settlement of their international disputes;*

*Declares that nothing in the present Declaration shall be construed as prejudicing in any manner the relevant provisions of the Charter or the rights and duties of States, or the scope of the functions and powers of the United Nations organs under the Charter, in particular those relating to the peaceful settlement of disputes;*

*Declares that nothing in the present Declaration could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist régimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration;*

*Stresses the need, in accordance with the Charter, to continue efforts to strengthen the process of the peaceful settlement of disputes through progressive development and codification of international law, as appropriate, and through enhancing the effectiveness of the United Nations in this field.*

### 37/11. United Nations Conference on Succession of States in respect of State Property, Archives and Debts

*The General Assembly,*

*Recalling that, by its resolution 36/113 of 10 December 1981, it decided to convene a conference of plenipotentiaries in 1983 to consider the draft articles on succession of States in respect of State property, archives and debts, adopted by*

**Definition of Aggression**  
**(United Nations General Assembly resolution 3314 (XXIX) of**  
**14 December 1974)**

to facilitating recourse to it for the judicial settlement of disputes, *inter alia* by simplifying the procedure, reducing the likelihood of undue delays and costs and allowing for greater influence of parties on the composition of *ad hoc* chambers,

*Recalling* the increasing development and codification of international law in conventions open for universal participation and the consequent need for their uniform interpretation and application,

*Recognizing* that the development of international law may be reflected, *inter alia*, by declarations and resolutions of the General Assembly which may to that extent be taken into consideration by the International Court of Justice,

*Recalling further* the opportunities afforded by the power of the International Court of Justice, under Article 38, paragraph 2, of its Statute, to decide a case *ex aequo et bono* if the parties agree thereto,

1. *Recognizes* the desirability that States study the possibility of accepting, with as few reservations as possible, the compulsory jurisdiction of the International Court of Justice in accordance with Article 36 of its Statute;

2. *Draws the attention* of States to the advantage of inserting in treaties, in cases considered possible and appropriate, clauses providing for the submission to the International Court of Justice of disputes which may arise from the interpretation or application of such treaties;

3. *Calls upon* States to keep under review the possibility of identifying cases in which use can be made of the International Court of Justice;

4. *Draws the attention* of States to the possibility of making use of chambers as provided in Articles 26 and 29 of the Statute of the International Court of Justice and in the Rules of Court, including those which would deal with particular categories of cases;

5. *Recommends* that United Nations organs and the specialized agencies should, from time to time, review legal questions within the competence of the International Court of Justice that have arisen or will arise during their activities and should study the advisability of referring them to the Court for an advisory opinion, provided that they are duly authorized to do so;

6. *Reaffirms* that recourse to judicial settlement of legal disputes, particularly referral to the International Court of Justice, should not be considered an unfriendly act between States.

2280th plenary meeting  
12 November 1974

### 3233 (XXIX). Participation in the Convention on Special Missions, its Optional Protocol concerning the Compulsory Settlement of Disputes and the Vienna Convention on the Law of Treaties

*The General Assembly,*

*Recalling* that, by its resolution 2530 (XXIV) of 8 December 1969, it adopted and opened for signature and ratification or for accession the Convention on Special Missions and its Optional Protocol concerning the Compulsory Settlement of Disputes and resolved to consider at a later session the question of issuing

invitations in order to ensure the widest possible participation therein,

*Noting* the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties, adopted by the United Nations Conference on the Law of Treaties,<sup>4</sup> in which the General Assembly was invited to give consideration to the matter of issuing invitations in order to ensure the widest possible participation in that Convention,

*Decides* to invite all States to become parties to the Convention on Special Missions, its Optional Protocol concerning the Compulsory Settlement of Disputes and the Vienna Convention on the Law of Treaties.<sup>5</sup>

2280th plenary meeting  
12 November 1974

### 3247 (XXIX). Participation in the United Nations Conference on the Representation of States in Their Relations with International Organizations

*The General Assembly,*

*Recalling* that by its resolution 3072 (XXVIII) of 30 November 1973 it decided that the United Nations Conference on the Representation of States in Their Relations with International Organizations would be held early in 1975 at Vienna,

1. *Decides* to invite all States to participate in the United Nations Conference on the Representation of States in Their Relations with International Organizations and requests the Secretary-General to take all necessary steps to give effect to resolution 3072 (XXVIII) and the present resolution;

2. *Decides* to invite also the national liberation movements recognized by the Organization of African Unity and/or by the League of Arab States in their respective regions to participate in the Conference as observers, in accordance with the practice of the United Nations.

2303rd plenary meeting  
29 November 1974

### 3314 (XXIX). Definition of Aggression

*The General Assembly,*

*Having considered* the report of the Special Committee on the Question of Defining Aggression, established pursuant to its resolution 2330 (XXII)<sup>6</sup> of 18 December 1967, covering the work of its seventh session held from 11 March to 12 April 1974, including the draft Definition of Aggression adopted by the Special Committee by consensus and recommended for adoption by the General Assembly,<sup>7</sup>

*Deeply convinced* that the adoption of the Definition of Aggression would contribute to the strengthening of international peace and security,

1. *Approves* the Definition of Aggression, the text of which is annexed to the present resolution;

<sup>4</sup> Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference (United Nations publication, Sales No.: E.70.V.5), document A/CONF.39/26, p. 285.

<sup>5</sup> Ibid., document A/CONF.39/27, p. 287.

<sup>6</sup> Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 19 (A/9619 and Corr.1).

2. Expresses its appreciation to the Special Committee on the Question of Defining Aggression for its work which resulted in the elaboration of the Definition of Aggression;

3. Calls upon all States to refrain from all acts of aggression and other uses of force contrary to the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations;<sup>7</sup>

4. Calls the attention of the Security Council to the Definition of Aggression, as set out below, and recommends that it should, as appropriate, take account of that Definition as guidance in determining, in accordance with the Charter, the existence of an act of aggression.

2319th plenary meeting  
14 December 1974

#### ANNEX

##### Definition of Aggression

###### *The General Assembly,*

Basing itself on the fact that one of the fundamental purposes of the United Nations is to maintain international peace and security and to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace,

Recalling that the Security Council, in accordance with Article 39 of the Charter of the United Nations, shall determine the existence of any threat to the peace, breach of the peace or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security,

Recalling also the duty of States under the Charter to settle their international disputes by peaceful means in order not to endanger international peace, security and justice,

Bearing in mind that nothing in this Definition shall be interpreted as in any way affecting the scope of the provisions of the Charter with respect to the functions and powers of the organs of the United Nations,

Considering also that, since aggression is the most serious and dangerous form of the illegal use of force, being fraught, in the conditions created by the existence of all types of weapons of mass destruction, with the possible threat of a world conflict and all its catastrophic consequences, aggression should be defined at the present stage,

Reaffirming the duty of States not to use armed force to deprive peoples of their right to self-determination, freedom and independence, or to disrupt territorial integrity,

Reaffirming also that the territory of a State shall not be violated by being the object, even temporarily, of military occupation or of other measures of force taken by another State in contravention of the Charter, and that it shall not be the object of acquisition by another State resulting from such measures or the threat thereof,

Reaffirming also the provisions of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

Convinced that the adoption of a definition of aggression ought to have the effect of deterring a potential aggressor, would simplify the determination of acts of aggression and the implementation of measures to suppress them and would also facilitate the protection of the rights and lawful interests of, and the rendering of assistance to, the victim,

Believing that, although the question whether an act of aggression has been committed must be considered in the

light of all the circumstances of each particular case, it is nevertheless desirable to formulate basic principles as guidance for such determination,

Adopts the following Definition of Aggression:<sup>8</sup>

##### Article 1

Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.

*Explanatory note:* In this Definition the term "State":

(a) Is used without prejudice to questions of recognition or to whether a State is a member of the United Nations;

(b) Includes the concept of a "group of States" where appropriate.

##### Article 2

The first use of armed force by a State in contravention of the Charter shall constitute *prima facie* evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity.

##### Article 3

Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of article 2, qualify as an act of aggression:

(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(c) The blockade of the ports or coasts of a State by the armed forces of another State;

(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

##### Article 4

The acts enumerated above are not exhaustive and the Security Council may determine that other acts constitute aggression under the provisions of the Charter.

##### Article 5

1. No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression.

<sup>8</sup> Explanatory notes on articles 3 and 5 are to be found in paragraph 20 of the report of the Special Committee on the Question of Defining Aggression (*Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 19 (A/9619 and Corr.1)*). Statements on the Definition are contained in paragraphs 9 and 10 of the report of the Sixth Committee (A/9890).

<sup>7</sup> Resolution 2625 (XXV), annex.

2. A war of aggression is a crime against international peace. Aggression gives rise to international responsibility.
3. No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful.

#### *Article 6*

Nothing in this Definition shall be construed as in any way enlarging or diminishing the scope of the Charter, including its provisions concerning cases in which the use of force is lawful.

#### *Article 7*

Nothing in this Definition, and in particular article 3, could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist régimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration.

#### *Article 8*

In their interpretation and application the above provisions are interrelated and each provision should be construed in the context of the other provisions.

### **3315 (XXIX). Report of the International Law Commission<sup>9</sup>**

#### *The General Assembly,*

*Having considered the report of the International Law Commission on the work of its twenty-sixth session,<sup>10</sup>*

*Emphasizing the need for the progressive development of international law and its codification in order to make it a more effective means of implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States,<sup>11</sup> and to give increased importance to its role in relations among States,*

*Noting with appreciation that, at its twenty-sixth session, the International Law Commission, in the light of comments received from Member States, completed the second reading of the draft articles on succession of States in respect of treaties, as recommended by the General Assembly in resolution 3071 (XXVIII) of 30 November 1973,*

*Taking note of the draft articles prepared at the same session by the International Law Commission on State responsibility and on treaties concluded between States and international organizations or between international organizations,*

*Welcoming the fact that the International Law Commission commenced its work on the law of non-navigational uses of international watercourses by adopting the required preliminary measures,*

*Bearing in mind that the outstanding achievements of the International Law Commission during its twenty-six sessions in the field of the progressive development*

of international law and its codification, in accordance with the aims of Article 13, subparagraph 1 (a) of the Charter, contribute to the fostering of friendly relations among nations,

#### I

1. *Takes note of the report of the International Law Commission on the work of its twenty-sixth session;*

2. *Expresses its appreciation to the International Law Commission for the work it accomplished at that session;*

3. *Approves the programme of work planned by the International Law Commission for 1975;*

4. *Recommends that the International Law Commission should:*

(a) Continue on a high priority basis at its twenty-seventh session its work on State responsibility, taking into account General Assembly resolutions 1765 (XVII) of 20 November 1962, 1902 (XVIII) of 18 November 1963, 2400 (XXIII) of 11 December 1968, 2926 (XXVII) of 28 November 1972 and 3071 (XXVIII) of 30 November 1973, with a view to the preparation of a first set of draft articles on responsibility of States for internationally wrongful acts at the earliest possible time and to take up, as soon as appropriate, the separate topic of international liability for injurious consequences arising out of acts not prohibited by international law;

(b) Proceed with the preparation, on a priority basis, of draft articles on succession of States in respect of matters other than treaties;

(c) Proceed with the preparation of draft articles on the most-favoured-nation clause;

(d) Proceed with the preparation of draft articles on treaties concluded between States and international organizations or between international organizations;

(e) Continue its study of the law of the non-navigational uses of international watercourses, taking into account General Assembly resolutions 2669 (XXV) of 8 December 1970 and 3071 (XXVIII) of 30 November 1973 and other resolutions concerning the work of the International Law Commission on the topic, and comments received from Member States on the questions referred to in the annex to chapter V of the Commission's report;

5. *Approves, in the light of the importance of its existing work programme, a twelve-week period for the annual sessions of the International Law Commission, subject to review by the General Assembly whenever necessary;*

6. *Recognizes the efficacy of the methods and conditions of work by which the International Law Commission has carried out its tasks and expresses confidence that the Commission will continue to adopt methods of work well suited to the realization of the tasks entrusted to it;*

7. *Expresses its appreciation to the Secretary-General for having completed the supplementary report on the legal problems relating to the non-navigational uses of international watercourses,<sup>12</sup> requested by the General Assembly in resolution 2669 (XXV);*

8. *Expresses the wish that, in conjunction with future sessions of the International Law Commission, further seminars might be organized, which should continue to*

<sup>9</sup> See also p. 149, item 87.

<sup>10</sup> Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10 (A/9610/Rev.1).

<sup>11</sup> Resolution 2625 (XXV), annex.

<sup>12</sup> A/9732 (vols. I and II).

**Principles and guidelines for international negotiations  
(United Nations General Assembly resolution 53/101 of  
20 January 1999)**



## **General Assembly**

Distr.  
GENERAL

A/RES/53/101  
20 January 1999

*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;

...

### **RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY**

[*on the report of the Sixth Committee (A/53/630)*]

#### **53/101. 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<sup>1</sup> and of the Manila Declaration on the Peaceful Settlement of International Disputes,<sup>2</sup>

*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,

<sup>1</sup> Resolution 2625 (XXV), annex.

<sup>2</sup> Resolution 37/10, annex.

- (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.

*83rd plenary meeting  
8 December 1998*

**International Court of Justice**

**Reparation for Injuries Suffered in the Service of the  
United Nations  
Advisory Opinion**

*"'"'I.C.J. Reports 1949 (excerpts)*

the responsible *de jure* or *de facto* government with a view to obtaining the reparation due in respect of the damage caused (a) to the United Nations, (b) to the victim or to persons entitled through him?"

It will be useful to make the following preliminary observations :

(a) The Organization of the United Nations will be referred to usually, but not invariably, as "the Organization".

(b) Questions I (a) and I (b) refer to "an international claim against the responsible *de jure* or *de facto* government". The Court understands that these questions are directed to claims against a State, and will, therefore, in this opinion, use the expression "State" or "defendant State".

(c) The Court understands the word "agent" in the most liberal sense, that is to say, any person who, whether a paid official or not, and whether permanently employed or not, has been charged by an organ of the Organization with carrying out, or helping to carry out, one of its functions—in short, any person through whom it acts.

(d) As this question assumes an injury suffered in such circumstances as to involve a State's responsibility, it must be supposed, for the purpose of this Opinion, that the damage results from a failure by the State to perform obligations of which the purpose is to protect the agents of the Organization in the performance of their duties.

(e) The position of a defendant State which is not a member of the Organization is dealt with later, and for the present the Court will assume that the defendant State is a Member of the Organization.

\* \* \*

The questions asked of the Court relate to the "capacity to bring an international claim"; accordingly, we must begin by defining what is meant by that capacity, and consider the characteristics of the Organization, so as to determine whether, in general, these characteristics do, or do not, include for the Organization a right to present an international claim.

Competence to bring an international claim is, for those possessing it, the capacity to resort to the customary methods recognized by international law for the establishment, the presentation and the settlement of claims. Among these methods may be mentioned protest, request for an enquiry, negotiation, and request for submission to an arbitral tribunal or to the Court in so far as this may be authorized by the Statute.

This capacity certainly belongs to the State ; a State can bring an international claim against another State. Such a claim takes the form of a claim between two political entities, equal in law, similar

in form, and both the direct subjects of international law. It is dealt with by means of negotiation, and cannot, in the present state of the law as to international jurisdiction, be submitted to a tribunal, except with the consent of the States concerned.

When the Organization brings a claim against one of its Members, this claim will be presented in the same manner, and regulated by the same procedure. It may, when necessary, be supported by the political means at the disposal of the Organization. In these ways the Organization would find a method for securing the observance of its rights by the Member against which it has a claim.

But, in the international sphere, has the Organization such a nature as involves the capacity to bring an international claim ? In order to answer this question, the Court must first enquire whether the Charter has given the Organization such a position that it possesses, in regard to its Members, rights which it is entitled to ask them to respect. In other words, does the Organization possess international personality ? This is no doubt a doctrinal expression, which has sometimes given rise to controversy. But it will be used here to mean that if the Organization is recognized as having that personality, it is an entity capable of availling itself of obligations incumbent upon its Members.

To answer this question, which is not settled by the actual terms of the Charter, we must consider what characteristics it was intended thereby to give to the Organization.

The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community. Throughout its history, the development of international law has been influenced by the requirements of international life, and the progressive increase in the collective activities of States has already given rise to instances of action upon the international plane by certain entities which are not States. This development culminated in the establishment in June 1945 of an international organization whose purposes and principles are specified in the Charter of the United Nations. But to achieve these ends the attribution of international personality is indispensable.

The Charter has not been content to make the Organization created by it merely a centre "for harmonizing the actions of nations in the attainment of these common ends" (Article I, para. 4). It has equipped that centre with organs, and has given it special tasks. It has defined the position of the Members in relation to the Organization by requiring them to give it every assistance in any action undertaken by it (Article 2, para. 5), and to accept and carry out the decisions of the Security Council ; by authorizing the General Assembly to make recommendations to the Members ;

by giving the Organization legal capacity and privileges and immunities in the territory of each of its Members; and by providing for the conclusion of agreements between the Organization and its Members. Practice—in particular the conclusion of conventions to which the Organization is a party—has confirmed this character of the Organization, which occupies a position in certain respects in detachment from its Members, and which is under a duty to remind them, if need be, of certain obligations. It must be added that the Organization is a political body, charged with political tasks of an important character, and covering a wide field namely, the maintenance of international peace and security, the development of friendly relations among nations, and the achievement of international co-operation in the solution of problems of an economic, social, cultural or humanitarian character (Article 1); and in dealing with its Members it employs political means. The "Convention on the Privileges and Immunities of the United Nations" of 1946 creates rights and duties between each of the signatories and the Organization (see, in particular, Section 35). It is difficult to see how such a convention could operate except upon the international plane and as between parties possessing international personality.

In the opinion of the Court, the Organization was intended to exercise and enjoy, and is in fact exercising and enjoying, functions and rights which can only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon an international plane. It is at present the supreme type of international organization, and it could not carry out the intentions of its founders if it was devoid of international personality. It must be acknowledged that its Members, by entrusting certain functions to it, with the attendant duties and responsibilities, have clothed it with the competence required to enable those functions to be effectively discharged.

Accordingly, the Court has come to the conclusion that the Organization is an international person. That is not the same thing as saying that it is a State, which it certainly is not, or that its legal personality and rights and duties are the same as those of a State. Still less is it the same thing as saying that it is a "super-State", whatever that expression may mean. It does not even imply that all its rights and duties must be upon the international plane. What it does mean is that it is a subject of international law and capable of possessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims.

The next question is whether the sum of the international rights of the Organization comprises the right to bring the kind of international claim described in the Request for this Opinion. That is a claim against a State to obtain reparation in respect of the

**International Court of Justice**

**Military and Paramilitary Activities in and against Nicaragua  
(Nicaragua v. United States of America), Merits  
Judgment**

*I.C.J. Reports 1986 (excerpts)*

relevant international law”, namely, Article 2, paragraph 4, of the United Nations Charter. In brief, in a more general sense “the provisions of the United Nations Charter relevant here subsume and supervene related principles of customary and general international law”. The United States concludes that “since the multilateral treaty reservation bars adjudication of claims based on those treaties, it bars all of Nicaragua’s claims”. Thus the effect of the reservation in question is not, it is said, merely to prevent the Court from deciding upon Nicaragua’s claims by applying the multilateral treaties in question ; it further prevents it from applying in its decision any rule of customary international law the content of which is also the subject of a provision in those multilateral treaties.

174. In its Judgment of 26 November 1984, the Court has already commented briefly on this line of argument. Contrary to the views advanced by the United States, it affirmed that it

“cannot dismiss the claims of Nicaragua under principles of customary and general international law, simply because such principles have been enshrined in the texts of the conventions relied upon by Nicaragua. The fact that the above-mentioned principles, recognized as such, have been codified or embodied in multilateral conventions does not mean that they cease to exist and to apply as principles of customary law, even as regards countries that are parties to such conventions. Principles such as those of the non-use of force, non-intervention, respect for the independence and territorial integrity of States, and the freedom of navigation, continue to be binding as part of customary international law, despite the operation of provisions of conventional law in which they have been incorporated.” (*I.C.J. Reports 1984*, p. 424, para. 73.)

Now that the Court has reached the stage of a decision on the merits, it must develop and refine upon these initial remarks. The Court would observe that, according to the United States argument, it should refrain from applying the rules of customary international law because they have been “subsumed” and “supervened” by those of international treaty law, and especially those of the United Nations Charter. Thus the United States apparently takes the view that the existence of principles in the United Nations Charter precludes the possibility that similar rules might exist independently in customary international law, either because existing customary rules had been incorporated into the Charter, or because the Charter influenced the latter adoption of customary rules with a corresponding content.

175. The Court does not consider that, in the areas of law relevant to the present dispute, it can be claimed that all the customary rules which may be invoked have a content exactly identical to that of the rules contained in

the treaties which cannot be applied by virtue of the United States reservation. On a number of points, the areas governed by the two sources of law do not exactly overlap, and the substantive rules in which they are framed are not identical in content. But in addition, even if a treaty norm and a customary norm relevant to the present dispute were to have exactly the same content, this would not be a reason for the Court to take the view that the operation of the treaty process must necessarily deprive the customary norm of its separate applicability. Nor can the multilateral treaty reservation be interpreted as meaning that, once applicable to a given dispute, it would exclude the application of any rule of customary international law the content of which was the same as, or analogous to, that of the treaty-law rule which had caused the reservation to become effective.

176. As regards the suggestion that the areas covered by the two sources of law are identical, the Court observes that the United Nations Charter, the convention to which most of the United States argument is directed, by no means covers the whole area of the regulation of the use of force in international relations. On one essential point, this treaty itself refers to pre-existing customary international law ; this reference to customary law is contained in the actual text of Article 51, which mentions the “inherent right” (in the French text the “droit naturel”) of individual or collective self-defence, which “nothing in the present Charter shall impair” and which applies in the event of an armed attack. The Court therefore finds that Article 51 of the Charter is only meaningful on the basis that there is a “natural” or “inherent” right of self-defence, and it is hard to see how this can be other than of a customary nature, even if its present content has been confirmed and influenced by the Charter. Moreover the Charter, having itself recognized the existence of this right, does not go on to regulate directly all aspects of its content. For example, it does not contain any specific rule whereby self-defence would warrant only measures which are proportional to the armed attack and necessary to respond to it, a rule well established in customary international law. Moreover, a definition of the “armed attack” which, if found to exist, authorizes the exercise of the “inherent right” of self-defence, is not provided in the Charter, and is not part of treaty law. It cannot therefore be held that Article 51 is a provision which “subsumes and supervenes” customary international law. It rather demonstrates that in the field in question, the importance of which for the present dispute need hardly be stressed, customary international law continues to exist alongside treaty law. The areas governed by the two sources of law thus do not overlap exactly, and the rules do not have the same content. This could also be demonstrated for other subjects, in particular for the principle of non-intervention.

177. But as observed above (paragraph 175), even if the customary norm and the treaty norm were to have exactly the same content, this

would not be a reason for the Court to hold that the incorporation of the customary norm into treaty-law must deprive the customary norm of its applicability as distinct from that of the treaty norm. The existence of identical rules in international treaty law and customary law has been clearly recognized by the Court in the *North Sea Continental Shelf* cases. To a large extent, those cases turned on the question whether a rule enshrined in a treaty also existed as a customary rule, either because the treaty had merely codified the custom, or caused it to "crystallize", or because it had influenced its subsequent adoption. The Court found that this identity of content in treaty law and in customary international law did not exist in the case of the rule invoked, which appeared in one article of the treaty, but did not suggest that such identity was debarred as a matter of principle : on the contrary, it considered it to be clear that certain other articles of the treaty in question "were ... regarded as reflecting, or as crystallizing, received or at least emergent rules of customary international law" (*I.C.J. Reports 1969*, p. 39, para. 63). More generally, there are no grounds for holding that when customary international law is comprised of rules identical to those of treaty law, the latter "supervenes" the former, so that the customary international law has no further existence of its own.

178. There are a number of reasons for considering that, even if two norms belonging to two sources of international law appear identical in content, and even if the States in question are bound by these rules both on the level of treaty-law and on that of customary international law, these norms retain a separate existence. This is so from the standpoint of their applicability. In a legal dispute affecting two States, one of them may argue that the applicability of a treaty rule to its own conduct depends on the other State's conduct in respect of the application of other rules, on other subjects, also included in the same treaty. For example, if a State exercises its right to terminate or suspend the operation of a treaty on the ground of the violation by the other party of "a provision essential to the accomplishment of the object or purpose of the treaty" (in the words of Art. 60, para. 3 (b), of the Vienna Convention on the Law of Treaties), it is exempted, vis-à-vis the other State, from a rule of treaty-law because of the breach by that other State of a different rule of treaty-law. But if the two rules in question also exist as rules of customary international law, the failure of the one State to apply the one rule does not justify the other State in declining to apply the other rule. Rules which are identical in treaty law and in customary international law are also distinguishable by reference to the methods of interpretation and application. A State may accept a rule contained in a treaty not simply because it favours the application of the rule itself, but also because the treaty establishes what that State regards as desirable institutions or mechanisms to ensure implementation of the rule. Thus, if that rule parallels a rule of customary international law, two rules of the same content are subject to separate treatment as regards the organs competent to verify their implementation, depending on whether they are

customary rules or treaty rules. The present dispute illustrates this point.

179. It will therefore be clear that customary international law continues to exist and to apply, separately from international treaty law, even where the two categories of law have an identical content. Consequently, in ascertaining the content of the customary international law applicable to the present dispute, the Court must satisfy itself that the Parties are bound by the customary rules in question ; but the Court is in no way bound to uphold these rules only in so far as they differ from the treaty rules which it is prevented by the United States reservation from applying in the present dispute.

180. The United States however presented a further argument, during the proceedings devoted to the question of jurisdiction and admissibility, in support of its contention that the multilateral treaty reservation debars the Court from considering the Nicaraguan claims based on customary international law. The United States observed that the multilateral treaties in question contain legal standards specifically agreed between the Parties to govern their mutual rights and obligations, and that the conduct of the Parties will continue to be governed by these treaties, irrespective of what the Court may decide on the customary law issue, because of the principle of *pacta sunt servanda*. Accordingly, in the contention of the United States, the Court cannot properly adjudicate the mutual rights and obligations of the two States when reference to their treaty rights and obligations is barred ; the Court would be adjudicating those rights and obligations by standards other than those to which the Parties have agreed to conduct themselves in their actual international relations.

181. The question raised by this argument is whether the provisions of the multilateral treaties in question, particularly the United Nations Charter, diverge from the relevant rules of customary international law to such an extent that a judgment of the Court as to the rights and obligations of the parties under customary law, disregarding the content of the multilateral treaties binding on the parties, would be a wholly academic exercise, and not "susceptible of any compliance or execution whatever" (*Northern Cameroons, I.C.J. Reports 1963*, p. 37). The Court does not consider that this is the case. As already noted, on the question of the use of force, the United States itself argues for a complete identity of the relevant rules of customary international law with the provisions of the Charter. The Court has not accepted this extreme contention, having found that on a number of points the areas governed by the two sources of law do not exactly overlap, and the substantive rules in which they are framed are not identical in content (paragraph 174 above). However, so far from having constituted a marked departure from a customary international law which still exists unmodified, the Charter gave expression in this field to principles already present in customary international law, and that law has in the subsequent four decades developed under the influence of the Charter,

to such an extent that a number of rules contained in the Charter have acquired a status independent of it. The essential consideration is that both the Charter and the customary international law flow from a common fundamental principle outlawing the use of force in international relations. The differences which may exist between the specific content of each are not, in the Court's view, such as to cause a judgment confined to the field of customary international law to be ineffective or inappropriate, or a judgement not susceptible of compliance or execution.

182. The Court concludes that it should exercise the jurisdiction conferred upon it by the United States declaration of acceptance under Article 36, paragraph 2, of the Statute, to determine the claims of Nicaragua based upon customary international law notwithstanding the exclusion from its jurisdiction of disputes "arising under" the United Nations and Organization of American States Charters.

\* \* \*

183. In view of this conclusion, the Court has next to consider what are the rules of customary international law applicable to the present dispute. For this purpose, it has to direct its attention to the practice and *opinio juris* of States ; as the Court recently observed,

"It is of course axiomatic that the material of customary international law is to be looked for primarily in the actual practice and *opinio juris* of States, even though multilateral conventions may have an important role to play in recording and defining rules deriving from custom, or indeed in developing them." (*Continental Shelf (Libyan Arab Jamahiriya/Malta)*, I.C.J. Reports 1985, pp. 29-30, para. 27.)

In this respect the Court must not lose sight of the Charter of the United Nations and that of the Organization of American States, notwithstanding the operation of the multilateral treaty reservation. Although the Court has no jurisdiction to determine whether the conduct of the United States constitutes a breach of those conventions, it can and must take them into account in ascertaining the content of the customary international law which the United States is also alleged to have infringed.

184. The Court notes that there is in fact evidence, to be examined below, of a considerable degree of agreement between the Parties as to the content of the customary international law relating to the non-use of force and non-intervention. This concurrence of their views does not however dispense the Court from having itself to ascertain what rules of customary international law are applicable. The mere fact that States declare their recognition of certain rules is not sufficient for the Court to consider these as being part of customary international law, and as applicable as such to those States. Bound as it is by Article 38 of its Statute to apply, *inter alia*,

192. Moreover, in the part of this same resolution devoted to the principle of non-intervention in matters within the national jurisdiction of States, a very similar rule is found :

"Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State, or interfere in civil strife in another State."

In the context of the inter-American system, this approach can be traced back at least to 1928 (Convention on the Rights and Duties of States in the Event of Civil Strife, Art. 1(1)) ; it was confirmed by resolution 78 adopted by the General Assembly of the Organization of American States on 21 April 1972. The operative part of this resolution reads as follows :

"The General Assembly Resolves :

1. To reiterate solemnly the need for the member states of the Organization to observe strictly the principles of nonintervention and self-determination of peoples as a means of ensuring peaceful coexistence among them and to refrain from committing any direct or indirect act that might constitute a violation of those principles.
2. To reaffirm the obligation of those states to refrain from applying economic, political, or any other type of measures to coerce another state and obtain from it advantages of any kind.
3. Similarly, to reaffirm the obligation of these states to refrain from organizing, supporting, promoting, financing, instigating, or tolerating subversive, terrorist, or armed activities against another state and from intervening in a civil war in another state or in its internal struggles."

193. The general rule prohibiting force allows for certain exceptions. In view of the arguments advanced by the United States to justify the acts of which it is accused by Nicaragua, the Court must express a view on the content of the right of self-defence, and more particularly the right of collective self-defence. First, with regard to the existence of this right, it notes that in the language of Article 51 of the United Nations Charter, the inherent right (or "droit naturel") which any State possesses in the event of an armed attack, covers both collective and individual self-defence. Thus, the Charter itself testifies to the existence of the right of collective self-defence in customary international law. Moreover, just as the wording of certain General Assembly declarations adopted by States demonstrates their recognition of the principle of the prohibition of force as definitely a matter of customary international law, some of the wording in those declarations operates similarly in respect of the right of self-defence (both collective and individual). Thus, in the declaration quoted above on the

Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, the reference to the prohibition of force is followed by a paragraph stating that :

"nothing in the foregoing paragraphs shall be construed as enlarging or diminishing in any way the scope of the provisions of the Charter concerning cases in which the use of force is lawful".

This resolution demonstrates that the States represented in the General Assembly regard the exception to the prohibition of force constituted by the right of individual or collective self-defence as already a matter of customary international law.

194. With regard to the characteristics governing the right of self-defence, since the Parties consider the existence of this right to be established as a matter of customary international law, they have concentrated on the conditions governing its use. In view of the circumstances in which the dispute has arisen, reliance is placed by the Parties only on the right of self-defence in the case of an armed attack which has already occurred, and the issue of the lawfulness of a response to the imminent threat of armed attack has not been raised. Accordingly the Court expresses no view on that issue. The Parties also agree in holding that whether the response to the attack is lawful depends on observance of the criteria of the necessity and the proportionality of the measures taken in self-defence. Since the existence of the right of collective self-defence is established in customary international law, the Court must define the specific conditions which may have to be met for its exercise, in addition to the conditions of necessity and proportionality to which the Parties have referred.

195. In the case of individual self-defence, the exercise of this right is subject to the State concerned having been the victim of an armed attack. Reliance on collective self-defence of course does not remove the need for this. There appears now to be general agreement on the nature of the acts which can be treated as constituting armed attacks. In particular, it may be considered to be agreed that an armed attack must be understood as including not merely action by regular armed forces across an international border, but also "the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to" (*inter alia*) an actual armed attack conducted by regular forces, "or its substantial involvement therein". This description, contained in Article 3, paragraph (g), of the Definition of Aggression annexed to General Assembly resolution 3314 (XXIX), may be taken to reflect customary international law. The Court sees no reason to deny that, in customary law, the prohibition of armed attacks may apply to the sending by a State of armed bands to the territory of another State, if such an operation, because of its scale and effects, would have been classified as an armed attack rather than as a mere frontier incident had it been carried out by regular armed forces. But the

Court does not believe that the concept of "armed attack" includes not only acts by armed bands where such acts occur on a significant scale but also assistance to rebels in the form of the provision of weapons or logistical or other support. Such assistance may be regarded as a threat or use of force, or amount to intervention in the internal or external affairs of other States. It is also clear that it is the State which is the victim of an armed attack which must form and declare the view that it has been so attacked. There is no rule in customary international law permitting another State to exercise the right of collective self-defence on the basis of its own assessment of the situation. Where collective self-defence is invoked, it is to be expected that the State for whose benefit this right is used will have declared itself to be the victim of an armed attack.

196. The question remains whether the lawfulness of the use of collective self-defence by the third State for the benefit of the attacked State also depends on a request addressed by that State to the third State. A provision of the Charter of the Organization of American States is here in point : and while the Court has no jurisdiction to consider that instrument as applicable to the dispute, it may examine it to ascertain what light it throws on the content of customary international law. The Court notes that the Organization of American States Charter includes, in Article 3 (*f*), the principle that : "an act of aggression against one American State is an act of aggression against all the other American States" and a provision in Article 27 that :

"Every act of aggression by a State against the territorial integrity or the inviolability of the territory or against the sovereignty or political independence of an American State shall be considered an act of aggression against the other American States."

197. Furthermore, by Article 3, paragraph 1, of the Inter-American Treaty of Reciprocal Assistance, signed at Rio de Janeiro on 2 September 1947, the High-Contracting Parties

"agree that an armed attack by any State against an American State shall be considered as an attack against all the American States and, consequently, each one of the said Contracting Parties undertakes to assist in meeting the attack in the exercise of the inherent right of individual or collective self-defence recognized by Article 51 of the Charter of the United Nations";

and under paragraph 2 of that Article,

"On the request of the State or States directly attacked and until the decision of the Organ of Consultation of the Inter-American System, each one of the Contracting Parties may determine the immediate

measures which it may individually take in fulfilment of the obligation contained in the preceding paragraph and in accordance with the principle of continental solidarity.”

(The 1947 Rio Treaty was modified by the 1975 Protocol of San José, Costa Rica, but that Protocol is not yet in force.)

198. The Court observes that the Treaty of Rio de Janeiro provides that measures of collective self-defence taken by each State are decided “on the request of the State or States directly attacked”. It is significant that this requirement of a request on the part of the attacked State appears in the treaty particularly devoted to these matters of mutual assistance ; it is not found in the more general text (the Charter of the Organization of American States), but Article 28 of that Charter provides for the application of the measures and procedures laid down in “the special treaties on the subject”.

199. At all events, the Court finds that in customary international law, whether of a general kind or that particular to the inter-American legal system, there is no rule permitting the exercise of collective self-defence in the absence of a request by the State which regards itself as the victim of an armed attack. The Court concludes that the requirement of a request by the State which is the victim of the alleged attack is additional to the requirement that such a State should have declared itself to have been attacked. 200. At this point, the Court may consider whether in customary international law there is any requirement corresponding to that found in the treaty law of the United Nations Charter, by which the State claiming to use the right of individual or collective self-defence must report to an international body, empowered to determine the conformity with international law of the measures which the State is seeking to justify on that basis. Thus Article 51 of the United Nations Charter requires that measures taken by States in exercise of this right of self-defence must be “immediately reported” to the Security Council. As the Court has observed above (paragraphs 178 and 188), a principle enshrined in a treaty, if reflected in customary international law, may well be so unencumbered with the conditions and modalities surrounding it in the treaty. Whatever influence the Charter may have had on customary international law in these matters, it is clear that in customary international law it is not a condition of the lawfulness of the use of force in self-defence that a procedure so closely dependent on the content of a treaty commitment and of the institutions established by it, should have been followed. On the other hand, if self-defence is advanced as a justification for measures which would otherwise be in breach both of the principle of customary international law and of that contained in the Charter, it is to be expected that the conditions of the Charter should be respected. Thus for the purpose of enquiry into the customary law position, the absence of a report may be one of the factors indicating whether the State in question was itself convinced that it was acting in self-defence.

201. To justify certain activities involving the use of force, the United States has relied solely on the exercise of its right of collective self-defence. However the Court, having regard particularly to the non-participation of the United States in the merits phase, considers that it should enquire whether customary international law, applicable to the present dispute, may contain other rules which may exclude the unlawfulness of such activities. It does not, however, see any need to reopen the question of the conditions governing the exercise of the right of individual self-defence, which have already been examined in connection with collective self-defence. On the other hand, the Court must enquire whether there is any justification for the activities in question, to be found not in the right of collective self-defence against an armed attack, but in the right to take counter-measures in response to conduct of Nicaragua which is not alleged to constitute an armed attack. It will examine this point in connection with an analysis of the principle of non-intervention in customary international law.

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202. The principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference ; though examples of trespass against this principle are not infrequent, the Court considers that it is part and parcel of customary international law. As the Court has observed : “Between independent States, respect for territorial sovereignty is an essential foundation of international relations” (*I.C.J. Reports 1949*, p. 35), and international law requires political integrity also to be respected. Expressions of an *opinio juris* regarding the existence of the principle of non-intervention in customary international law are numerous and not difficult to find. Of course, statements whereby States avow their recognition of the principles of international law set forth in the United Nations Charter cannot strictly be interpreted as applying to the principle of non-intervention by States in the internal and external affairs of other States, since this principle is not, as such, spelt out in the Charter. But it was never intended that the Charter should embody written confirmation of every essential principle of international law in force. The existence in the *opinio juris* of States of the principle of non-intervention is backed by established and substantial practice. It has moreover been presented as a corollary of the principle of the sovereign equality of States. A particular instance of this is General Assembly resolution 2625 (XXV), the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States. In the *Corfu Channel* case, when a State claimed a right of intervention in order to secure evidence in the territory of another State for submission to an international tribunal (*I.C.J. Reports 1949*, p. 34), the Court observed that :

"the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law. Intervention is perhaps still less admissible in the particular form it would take here; for, from the nature of things, it would be reserved for the most powerful States, and might easily lead to perverting the administration of international justice itself." (*I.C.J. Reports 1949*, p. 35.)

203. The principle has since been reflected in numerous declarations adopted by international organizations and conferences in which the United States and Nicaragua have participated, e.g., General Assembly resolution 2131 (XX), the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty. It is true that the United States, while it voted in favour of General Assembly resolution 2131 (XX), also declared at the time of its adoption in the First Committee that it considered the declaration in that resolution to be "only a statement of political intention and not a formulation of law" (*Official Records of the General Assembly, Twentieth Session, First Committee, A/C.1/SR.1423*, p. 436). However, the essentials of resolution 2131 (XX) are repeated in the Declaration approved by resolution 2625 (XXV), which set out principles which the General Assembly declared to be "basic principles" of international law, and on the adoption of which no analogous statement was made by the United States representative.

204. As regards inter-American relations, attention may be drawn to, for example, the United States reservation to the Montevideo Convention on Rights and Duties of States (26 December 1933), declaring the opposition of the United States Government to "interference with the freedom, the sovereignty or other internal affairs, or processes of the Governments of other nations"; or the ratification by the United States of the Additional Protocol relative to Non-Intervention (23 December 1936). Among more recent texts, mention may be made of resolutions AG/RES.78 and AG/RES.128 of the General Assembly of the Organization of American States. In a different context, the United States expressly accepted the principles set forth in the declaration, to which reference has already been made, appearing in the Final Act of the Conference on Security and Co-operation in Europe (Helsinki, 1 August 1975), including an elaborate statement of the principle of non-intervention; while these principles were presented as applying to the mutual relations among the participating States, it can be inferred that the text testifies to the existence, and the acceptance by the United States, of a customary principle which has universal application.

205. Notwithstanding the multiplicity of declarations by States accepting the principle of non-intervention, there remain two questions: first,

what is the exact content of the principle so accepted, and secondly, is the practice sufficiently in conformity with it for this to be a rule of customary international law? As regards the first problem — that of the content of the principle of non-intervention — the Court will define only those aspects of the principle which appear to be relevant to the resolution of the dispute. In this respect it notes that, in view of the generally accepted formulations, the principle forbids all States or groups of States to intervene directly or indirectly in internal or external affairs of other States. A prohibited intervention must accordingly be one bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely. One of these is the choice of a political, economic, social and cultural system, and the formulation of foreign policy. Intervention is wrongful when it uses methods of coercion in regard to such choices, which must remain free ones. The element of coercion, which defines, and indeed forms the very essence of, prohibited intervention, is particularly obvious in the case of an intervention which uses force, either in the direct form of military action, or in the indirect form of support for subversive or terrorist armed activities within another State. As noted above (paragraph 191), General Assembly resolution 2625 (XXV) equates assistance of this kind with the use of force by the assisting State when the acts committed in another State "involve a threat or use of force". These forms of action are therefore wrongful in the light of both the principle of non-use of force, and that of non-intervention. In view of the nature of Nicaragua's complaints against the United States, and those expressed by the United States in regard to Nicaragua's conduct towards El Salvador, it is primarily acts of intervention of this kind with which the Court is concerned in the present case.

206. However, before reaching a conclusion on the nature of prohibited intervention, the Court must be satisfied that State practice justifies it. There have been in recent years a number of instances of foreign intervention for the benefit of forces opposed to the government of another State. The Court is not here concerned with the process of decolonization; this question is not in issue in the present case. It has to consider whether there might be indications of a practice illustrative of belief in a kind of general right for States to intervene, directly or indirectly, with or without armed force, in support of an internal opposition in another State, whose cause appeared particularly worthy by reason of the political and moral values with which it was identified. For such a general right to come into existence would involve a fundamental modification of the customary law principle of non-intervention.

207. In considering the instances of the conduct above described, the Court has to emphasize that, as was observed in the *North Sea Continental Shelf* cases, for a new customary rule to be formed, not only must the acts concerned "amount to a settled practice", but they must be accompanied

by the *opinio juris sive necessitatis*. Either the States taking such action or other States in a position to react to it, must have behaved so that their conduct is

"evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it. The need for such a belief, i.e., the existence of a subjective element, is implicit in the very notion of the *opinio juris sive necessitatis*." (*I.C.J. Reports 1969*, p. 44, para. 77.)

The Court has no jurisdiction to rule upon the conformity with international law of any conduct of States not parties to the present dispute, or of conduct of the Parties unconnected with the dispute ; nor has it authority to ascribe to States legal views which they do not themselves advance. The significance for the Court of cases of State conduct *prima facie* inconsistent with the principle of non-intervention lies in the nature of the ground offered as justification. Reliance by a State on a novel right or an unprecedented exception to the principle might, if shared in principle by other States, tend towards a modification of customary international law. In fact however the Court finds that States have not justified their conduct by reference to a new right of intervention or a new exception to the principle of its prohibition. The United States authorities have on some occasions clearly stated their grounds for intervening in the affairs of a foreign State for reasons connected with, for example, the domestic policies of that country, its ideology, the level of its armaments, or the direction of its foreign policy. But these were statements of international policy, and not an assertion of rules of existing international law.

208. In particular, as regards the conduct towards Nicaragua which is the subject of the present case, the United States has not claimed that its intervention, which it justified in this way on the political level, was also justified on the legal level, alleging the exercise of a new right of intervention regarded by the United States as existing in such circumstances. As mentioned above, the United States has, on the legal plane, justified its intervention expressly and solely by reference to the "classic" rules involved, namely, collective self-defence against an armed attack. Nicaragua, for its part, has often expressed its solidarity and sympathy with the opposition in various States, especially in El Salvador. But Nicaragua too has not argued that this was a legal basis for an intervention, let alone an intervention involving the use of force.

209. The Court therefore finds that no such general right of intervention, in support of an opposition within another State, exists in contemporary international law. The Court concludes that acts constituting a breach of the customary principle of non-intervention will also, if they

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210. When dealing with the rule of the prohibition of the use of force, the Court considered the exception to it constituted by the exercise of the right of collective self-defence in the event of armed attack. Similarly, it must now consider the following question : if one State acts towards another State in breach of the principle of non-intervention, may a third State lawfully take such action by way of counter-measures against the first State as would otherwise constitute an intervention in its internal affairs ? A right to act in this way in the case of intervention would be analogous to the right of collective self-defence in the case of an armed attack, but both the act which gives rise to the reaction, and that reaction itself, would in principle be less grave. Since the Court is here dealing with a dispute in which a wrongful use of force is alleged, it has primarily to consider whether a State has a right to respond to intervention with intervention going so far as to justify a use of force in reaction to measures which do not constitute an armed attack but may nevertheless involve a use of force. The question is itself undeniably relevant from the theoretical viewpoint. However, since the Court is bound to confine its decision to those points of law which are essential to the settlement of the dispute before it, it is not for the Court here to determine what direct reactions are lawfully open to a State which considers itself the victim of another State's acts of intervention, possibly involving the use of force. Hence it has not to determine whether, in the event of Nicaragua's having committed any such acts against El Salvador, the latter was lawfully entitled to take any particular counter-measure. It might however be suggested that, in such a situation, the United States might have been permitted to intervene in Nicaragua in the exercise of some right analogous to the right of collective self-defence, one which might be resorted to in a case of intervention short of armed attack.

211. The Court has recalled above (paragraphs 193 to 195) that for one State to use force against another, on the ground that that State has committed a wrongful act of force against a third State, is regarded as lawful, by way of exception, only when the wrongful act provoking the response was an armed attack. Thus the lawfulness of the use of force by a State in response to a wrongful act of which it has not itself been the victim is not admitted when this wrongful act is not an armed attack. In the view of the Court, under international law in force today – whether customary international law or that of the United Nations system – States do not have a right of "collective" armed response to acts which do not constitute an "armed attack". Furthermore, the Court has to recall that the United States itself is relying on the "inherent right of self-defence" (paragraph 126 above), but apparently does not claim that any such right exists

as would, in respect of intervention, operate in the same way as the right of collective self-defence in respect of an armed attack. In the discharge of its duty under Article 53 of the Statute, the Court has nevertheless had to consider whether such a right might exist ; but in doing so it may take note of the absence of any such claim by the United States as an indication of *opinio juris*.

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212. The Court should now mention the principle of respect for State sovereignty, which in international law is of course closely linked with the principles of the prohibition of the use of force and of non-intervention. The basic legal concept of State sovereignty in customary international law, expressed in, *inter alia*, Article 2, paragraph 1, of the United Nations Charter, extends to the internal waters and territorial sea of every State and to the air space above its territory. As to superjacent air space, the 1944 Chicago Convention on International Civil Aviation (Art. 1) reproduces the established principle of the complete and exclusive sovereignty of a State over the air space above its territory. That convention, in conjunction with the 1958 Geneva Convention on the Territorial Sea, further specifies that the sovereignty of the coastal State extends to the territorial sea and to the air space above it, as does the United Nations Convention on the Law of the Sea adopted on 10 December 1982. The Court has no doubt that these prescriptions of treaty-law merely respond to firmly established and longstanding tenets of customary international law.

213. The duty of every State to respect the territorial sovereignty of others is to be considered for the appraisal to be made of the facts relating to the mining which occurred along Nicaragua's coasts. The legal rules in the light of which these acts of mining should be judged depend upon where they took place. The laying of mines within the ports of another State is governed by the law relating to internal waters, which are subject to the sovereignty of the coastal State. The position is similar as regards mines placed in the territorial sea. It is therefore the sovereignty of the coastal State which is affected in such cases. It is also by virtue of its sovereignty that the coastal State may regulate access to its ports.

214. On the other hand, it is true that in order to enjoy access to ports, foreign vessels possess a customary right of innocent passage in territorial waters for the purposes of entering or leaving internal waters ; Article 18, paragraph 1 (b), of the United Nations Convention on the Law of the Sea of 10 December 1982, does no more than codify customary international law on this point. Since freedom of navigation is guaranteed, first in the exclusive economic zones which may exist beyond territorial waters (Art. 58 of the Convention), and secondly, beyond territorial waters and on the high seas (Art. 87), it follows that any State which enjoys a right of access to ports for its ships also enjoys all the freedom necessary for

**International Court of Justice**

**Legality of the Threat or Use of Nuclear Weapons  
Advisory opinion**

*"'"'I.C.J. Reports 1996 (excerpts)*

Neutrality, concluded on 20 February 1928). It is clear, however, that the principle of neutrality applies with equal force to trans-border incursions of armed forces and to the transborder damage caused to a neutral State by the use of a weapon in a belligerent State.” (Nauru, Written Statement (I), p. 35, IV E.)

The principle so circumscribed is presented as an established part of the customary international law.

89. The Court finds that as in the case of the principles of humanitarian law applicable in armed conflict, international law leaves no doubt that the principle of neutrality, whatever its content, which is of a fundamental character similar to that of the humanitarian principles and rules, is applicable (subject to the relevant provisions of the United Nations Charter), to all international armed conflict, whatever type of weapons might be used.

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90. Although the applicability of the principles and rules of humanitarian law and of the principle of neutrality to nuclear weapons is hardly disputed, the conclusions to be drawn from this applicability are, on the other hand, controversial.

91. According to one point of view, the fact that recourse to nuclear weapons is subject to and regulated by the law of armed conflict does not necessarily mean that such recourse is as such prohibited. As one State put it to the Court:

“Assuming that a State’s use of nuclear weapons meets the requirements of self-defence, it must then be considered whether it conforms to the fundamental principles of the law of armed conflict regulating the conduct of hostilities” (United Kingdom, Written Statement, p. 40, para. 3.44);

“the legality of the use of nuclear weapons must therefore be assessed in the light of the applicable principles of international law regarding the use of force and the conduct of hostilities, as is the case with other methods and means of warfare” (*ibid.*, p. 75, para. 4.2 (3)); and

“The reality . . . is that nuclear weapons might be used in a wide variety of circumstances with very different results in terms of likely civilian casualties. In some cases, such as the use of a low yield nuclear weapon against warships on the High Seas or troops in sparsely populated areas, it is possible to envisage a nuclear attack which caused comparatively few civilian casualties. It is by no means the case that every use of nuclear weapons against a military objective would inevitably cause very great collateral civilian casualties.”

(*Ibid.*, p. 53, para. 3.70; see also United States of America, CR 95/34, pp. 89-90.)

92. Another view holds that recourse to nuclear weapons could never be compatible with the principles and rules of humanitarian law and is therefore prohibited. In the event of their use, nuclear weapons would in all circumstances be unable to draw any distinction between the civilian population and combatants, or between civilian objects and military objectives, and their effects, largely uncontrollable, could not be restricted, either in time or in space, to lawful military targets. Such weapons would kill and destroy in a necessarily indiscriminate manner, on account of the blast, heat and radiation occasioned by the nuclear explosion and the effects induced; and the number of casualties which would ensue would be enormous. The use of nuclear weapons would therefore be prohibited in any circumstance, notwithstanding the absence of any explicit conventional prohibition. That view lay at the basis of the assertions by certain States before the Court that nuclear weapons are by their nature illegal under customary international law, by virtue of the fundamental principle of humanity.

93. A similar view has been expressed with respect to the effects of the principle of neutrality. Like the principles and rules of humanitarian law, that principle has therefore been considered by some to rule out the use of a weapon the effects of which simply cannot be contained within the territories of the contending States.

94. The Court would observe that none of the States advocating the legality of the use of nuclear weapons under certain circumstances, including the “clean” use of smaller, low yield, tactical nuclear weapons, has indicated what, supposing such limited use were feasible, would be the precise circumstances justifying such use; nor whether such limited use would not tend to escalate into the all-out use of high yield nuclear weapons. This being so, the Court does not consider that it has a sufficient basis for a determination on the validity of this view.

95. Nor can the Court make a determination on the validity of the view that the recourse to nuclear weapons would be illegal in any circumstance owing to their inherent and total incompatibility with the law applicable in armed conflict. Certainly, as the Court has already indicated, the principles and rules of law applicable in armed conflict — at the heart of which is the overriding consideration of humanity — make the conduct of armed hostilities subject to a number of strict requirements. Thus, methods and means of warfare, which would preclude any distinction between civilian and military targets, or which would result in unnecessary suffering to combatants, are prohibited. In view of the unique characteristics of nuclear weapons, to which the Court has referred above, the use of such weapons in fact seems scarcely reconcilable with respect for such requirements. Nevertheless, the Court considers that it

does not have sufficient elements to enable it to conclude with certainty that the use of nuclear weapons would necessarily be at variance with the principles and rules of law applicable in armed conflict in any circumstance.

96. Furthermore, the Court cannot lose sight of the fundamental right of every State to survival, and thus its right to resort to self-defence, in accordance with Article 51 of the Charter, when its survival is at stake.

Nor can it ignore the practice referred to as “policy of deterrence”, to which an appreciable section of the international community adhered for many years. The Court also notes the reservations which certain nuclear-weapon States have appended to the undertakings they have given, notably under the Protocols to the Treaties of Tlatelolco and Rarotonga, and also under the declarations made by them in connection with the extension of the Treaty on the Non-Proliferation of Nuclear Weapons, not to resort to such weapons.

97. Accordingly, in view of the present state of international law viewed as a whole, as examined above by the Court, and of the elements of fact at its disposal, the Court is led to observe that it cannot reach a definitive conclusion as to the legality or illegality of the use of nuclear weapons by a State in an extreme circumstance of self-defence, in which its very survival would be at stake.

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98. Given the eminently difficult issues that arise in applying the law on the use of force and above all the law applicable in armed conflict to nuclear weapons, the Court considers that it now needs to examine one further aspect of the question before it, seen in a broader context.

In the long run, international law, and with it the stability of the international order which it is intended to govern, are bound to suffer from the continuing difference of views with regard to the legal status of weapons as deadly as nuclear weapons. It is consequently important to put an end to this state of affairs: the long-promised complete nuclear disarmament appears to be the most appropriate means of achieving that result.

99. In these circumstances, the Court appreciates the full importance of the recognition by Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons of an obligation to negotiate in good faith a nuclear disarmament. This provision is worded as follows:

“Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.”

The legal import of that obligation goes beyond that of a mere obligation of conduct; the obligation involved here is an obligation to achieve a precise result — nuclear disarmament in all its aspects — by adopting a particular course of conduct, namely, the pursuit of negotiations on the matter in good faith.

100. This twofold obligation to pursue and to conclude negotiations formally concerns the 182 States parties to the Treaty on the Non-Proliferation of Nuclear Weapons, or, in other words, the vast majority of the international community.

Virtually the whole of this community appears moreover to have been involved when resolutions of the United Nations General Assembly concerning nuclear disarmament have repeatedly been unanimously adopted. Indeed, any realistic search for general and complete disarmament, especially nuclear disarmament, necessitates the co-operation of all States.

101. Even the very first General Assembly resolution, unanimously adopted on 24 January 1946 at the London session, set up a commission whose terms of reference included making specific proposals for, among other things, “the elimination from national armaments of atomic weapons and of all other major weapons adaptable to mass destruction”. In a large number of subsequent resolutions, the General Assembly has reaffirmed the need for nuclear disarmament. Thus, in resolution 808 A (IX) of 4 November 1954, which was likewise unanimously adopted, it concluded

“that a further effort should be made to reach agreement on comprehensive and co-ordinated proposals to be embodied in a draft international disarmament convention providing for: . . . (b) The total prohibition of the use and manufacture of nuclear weapons and weapons of mass destruction of every type, together with the conversion of existing stocks of nuclear weapons for peaceful purposes.”

The same conviction has been expressed outside the United Nations context in various instruments.

102. The obligation expressed in Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons includes its fulfilment in accordance with the basic principle of good faith. This basic principle is set forth in Article 2, paragraph 2, of the Charter. It was reflected in the Declaration on Friendly Relations between States (resolution 2625 (XXV) of 24 October 1970) and in the Final Act of the Helsinki Conference of 1 August 1975. It is also embodied in Article 26 of the Vienna Convention on the Law of Treaties of 23 May 1969, according to which “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith”.

Nor has the Court omitted to draw attention to it, as follows:

“One of the basic principles governing the creation and perform-

ance of legal obligations, whatever their source, is the principle of good faith. Trust and confidence are inherent in international co-operation, in particular in an age when this co-operation in many fields is becoming increasingly essential.” (*Nuclear Tests (Australia v. France)*, *Judgment, I.C.J. Reports 1974*, p. 268, para. 46.)

103. In its resolution 984 (1995) dated 11 April 1995, the Security Council took care to reaffirm “the need for all States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons to comply fully with all their obligations” and urged “all States, as provided for in Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons, to pursue negotiations in good faith on effective measures relating to nuclear disarmament and on a treaty on general and complete disarmament under strict and effective international control which remains a universal goal”.

The importance of fulfilling the obligation expressed in Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons was also reaffirmed in the final document of the Review and Extension Conference of the parties to the Treaty on the Non-Proliferation of Nuclear Weapons, held from 17 April to 12 May 1995.

In the view of the Court, it remains without any doubt an objective of vital importance to the whole of the international community today.

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104. At the end of the present Opinion, the Court emphasizes that its reply to the question put to it by the General Assembly rests on the totality of the legal grounds set forth by the Court above (paragraphs 20 to 103), each of which is to be read in the light of the others. Some of these grounds are not such as to form the object of formal conclusions in the final paragraph of the Opinion; they nevertheless retain, in the view of the Court, all their importance.

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105. For these reasons,  
THE COURT,

(1) By thirteen votes to one,

*Decides to comply with the request for an advisory opinion;*  
IN FAVOUR: *President Bedjaoui; Vice-President Schwab; Judges Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Ferrari Bravo;*  
AGAINST: *Vice-President Schwab; Judges Oda, Guillaume, Shahabuddeen, Weeramantry, Koroma, Higgins;*

(2) *Replies in the following manner to the question put by the General Assembly:*

A. Unanimously,

There is in neither customary nor conventional international law any specific authorization of the threat or use of nuclear weapons;

B. By eleven votes to three,

There is in neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons as such;  
IN FAVOUR: *President Bedjaoui; Vice-President Schwab; Judges Oda, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Ferrari Bravo, Higgins;*  
AGAINST: *Judges Shahabuddeen, Weeramantry, Koroma;*

C. Unanimously,

A threat or use of force by means of nuclear weapons that is contrary to Article 2, paragraph 4, of the United Nations Charter and that fails to meet all the requirements of Article 51, is unlawful;

D. Unanimously,

A threat or use of nuclear weapons should also be compatible with the requirements of the international law applicable in armed conflict, particularly those of the principles and rules of international humanitarian law, as well as with specific obligations under treaties and other undertakings which expressly deal with nuclear weapons;

E. By seven votes to seven, by the President’s casting vote,  
It follows from the above-mentioned requirements that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law;  
However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake;

IN FAVOUR: *President Bedjaoui; Judges Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Ferrari Bravo;*  
AGAINST: *Vice-President Schwab; Judges Oda, Guillaume, Shahabuddeen, Weeramantry, Koroma, Higgins;*

## F. Unanimously,

There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this eighth day of July, one thousand nine hundred and ninety-six, in two copies, one of which will be placed in the archives of the Court and the other transmitted to the Secretary-General of the United Nations.

(Signed) Mohammed BEDJAOUI,  
President.

(Signed) Eduardo VALENCIA-OSPINAS,  
Registrar.

President BEDJAOUI, Judges HERCZEGH, SHI, VERESHCHETIN and FERRARI BRAVO append declarations to the Advisory Opinion of the Court.

Judges GUILLAUME, RANJAVA AND FLEISCHHAUER append separate opinions to the Advisory Opinion of the Court.

Vice-President SCHWEBEL, Judges ODA, SHAHABUDDEEN, WEERAMANTRY, KOROMA and HIGGINS append dissenting opinions to the Advisory Opinion of the Court.

(Initialled) M.B.

(Initialled) E.V.O.