UNITED NATIONS ACTIVITIES WITH SPECIAL RELEVANCE TO ASIA*

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1. AFGHANISTAN

By its resolution 45/12 entitled "The Situation in Afghanistan and its implications for international peace and security" adopted on 7 March 1990 without a vote, the General Assembly called for the scrupulous respect for and faithful implementation of the Agreements on the Settlement of the Situation Relating to Afghanistan concluded at Geneva on 14 April 1988 under UN auspices (Geneva Agreements) by all parties concerned; reiterated that the preservation of the sovereignty, territorial integrity, political independence and non-alignment and Islamic character of Afghanistan was essential for a peaceful solution of the Afghanistan problem; reaffirmed the right of the Afghan people to determine their own form of government and to choose their economic, political and social system free from outside intervention, subversion, coercion or constraint of any kind whatsoever.

2. NUCLEAR-WEAPON-FREE ZONE (NWFZ) IN SOUTH ASIA¹

At its 45th session, the General Assembly adopted on 4 December 1990

* The coverage of this Section is necessarily selective and can only include those topics of special relevance to Asian countries.

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1. This question was first introduced to the General Assembly by Pakistan in 1974 (see A/9706). At its 45th session, a report on the question was submitted by the Secretary-General (A/45/462) and was considered by the First Committee A/C.1/45/PV.3-23 and 35) and by the Plenary (A/45/PV.54).

resolution 45/53 on the subject² in which the Assembly reaffirmed its endorsement, in principle, of the concept of a nuclear-weapon-free zone in South Asia; urged once again the States of South Asia to continue to make all possible efforts to establish a NWFZ in South Asia and to refrain, in the meantime, from any action contrary to that objective; called upon those nuclear-weapons States which had not done so to respond positively to this proposal and to extend the necessary cooperation in the efforts to do so.

3. INDIAN OCEAN AS A ZONE OF PEACE³

In 1990, the General Assembly reiterated and emphasized its decision to convene the Conference on the Indian Ocean at Colombo as a necessary step for the implementation of the Declaration of the Indian Ocean as a Zone of Peace adopted in 1971 in resolution 2832 (XXVI). Two preparatory sessions were planned for 1991 to complete the remaining preparatory work relating to the Conference to enable the convening of the conference at Colombo in 1992 (GA resolution 45/77).

The Ad hoc Committee at its 1991 session adopted a list of 17 "Substantive elements for consideration at the UN Conference on the Indian Ocean", among which were the following:

11. Halting –
12. Halting –
13. Promotion
14. Withdrawal
15. Assurance
16. Non-prolif.
17. Promotion –⁴

2. It was adopted by a recorded vote, 114 for, 3 against (Bhutan, India and Mauritius) and 28 abstentions including Afghanistan, Cyprus, Indonesia, Laos, Mongolia, Myanmar, Seychelles, Vietnam and Yemen.

3. This question was introduced in 1971 to the General Assembly at the request of Sri Lanka later joined by Tanzania. An Ad hoc Committee on the Indian Ocean was created a year later (resolution 3259B (XXIX)) and was subsequently enlarged in 1980 and 1987. In 1990, France, UK and USA withdrew from the Ad hoc Committee. At present, the Committee is composed of 45 members.

4. Report of the Ad hoc Committee on the Indian Ocean, GAOR 46th sess., Suppl. 29 (A/46/29), Annex III.

4. CAMBODIA⁵

1. The Security Council adopted resolution 668 (1990) on the Situation of Cambodia on 20 September 1990, which *inter alia* endorsed the framework for a comprehensive political settlement of the Cambodia conflict (A/45/472 – S/21689, Annex, Appendix).

2. The General Assembly welcomed (i) the acceptance of this framework in its entirety by all the Cambodian parties, as the basis for settling the Cambodia conflict, at the informal meeting of the Cambodian parties in Jakarta on 10 September 1990, and their commitment to it (GA res. 45/3 adopted on 15 October 1990 without a vote); (ii) the agreement reached by all Cambodian parties in Jakarta (A/45/490 – S/21732, Annex) forming a Supreme National Council “as the unique legitimate body and source of authority in which, throughout the transitional period, the independence, national sovereignty and unity of Cambodia is embodied” (GA res. 45/3).

3. The General Assembly decided that the Supreme National Council would represent Cambodia externally and occupy the seat of Cambodia at the United Nations, in the United Nations specialized agencies and in other international institutions and international conferences (GA res. 45/3). (Cambodia was, however, not represented at the 45th session of the General Assembly.)

4. The General Assembly stressed that an enhanced role for the United Nations in Cambodia, charged with a clear and practical mandate, would help achieve the goal of the exercise of the right to self-determination for the Cambodian people through free and fair elections organized and conducted by the United Nations in a neutral political environment with full respect for the national sovereignty of Cambodia (GA res. 45/3).

5. HUMAN RIGHTS

(a) *Regional arrangements for the promotion and protection of human rights in the Asian and Pacific Region*⁶

5. See Secretary-General's Report A/45/605.

6. In 1982, a seminar on National, Local and Regional Arrangements for the Promotion and Protection of Human Rights in the Asian Region was held in Colombo (A/37/422, Annex). For background, see Commission on Human Rights res. 1990/71 (7 March 1990) and res. 1989/50 (7 March 1989), GA res. 43/140 (8 December 1988) and A/45/210 and E/1990/2.

1. The General Assembly continued to invite those States members of ESCAP, that have not done so to communicate their comments on the Report of the Colombo Seminar to the Secretary-General, in particular, to address themselves to the conclusions and recommendations in the report concerning the development of regional arrangements in Asia and the Pacific. In so doing, the Assembly, bearing in mind that intergovernmental arrangements for the promotion and protection of human rights have been established in other regions, recognized that regional arrangements make a major contribution to the promotion and protection of human rights and that non-governmental organizations may have a valuable role to play in this process.
2. The Library of the ESCAP has been designated as a depository centre for United Nations human rights materials within the Commission at Bangkok.
3. The General Assembly, in its resolution 45/168 of 18 December 1990, encouraged UN development agencies in the region to coordinate with the ESCAP their efforts to promote the human rights dimension in their activities.

(b) *Afghanistan*⁷

1. By its resolution 45/174, the General Assembly welcomed the cooperation of the Afghan authorities with the Special Rapporteur on the situation of human rights in Afghanistan⁸ and other UN officials and institutions, and the fact that the Special Rapporteur was able to visit areas in Afghanistan not under government control.
2. The Assembly urged all parties concerned to work for the achievement of a comprehensive political solution based on the free exercise of the right to self-determination by the people of Afghanistan through democratic procedures acceptable to the Afghan people, including free and fair elec-

7. See also *supra*, sec. 1.

8. In 1984, the Economic and Social Council requested the Chairman of the Commission on Human Rights to appoint a special rapporteur to examine the situation of human rights in Afghanistan with a view to formulating proposals that could continue to ensure full protection of the human rights of the inhabitants of the country before, during and after the withdrawal of all foreign forces (ECOSOC resolution 1984/37 of 24 May 1986). In 1988, the Agreements on the Settlement of the Situation Relating to Afghanistan was concluded in Geneva by all parties concerned (S/19835, Annex 1).

tions, and the creation of conditions conducive to the return of refugees to their homeland in safety and honour, and the full enjoyment of human rights and fundamental freedoms of all Afghans. All parties to the conflict were urged to respect the Geneva Conventions of 12 August 1949 (UN *Treaty Series*, vol. 75, Nos. 970–973) and the Additional Protocols thereto, of 1977, (UN *Treaty Series*, vol. 1125, Nos. 17512 and 17513), to halt the use of weapons against the civilian population, to protect all prisoners from acts of reprisals and violence, including ill-treatment, torture and summary execution, to transmit to the ICRC the names of all prisoners as well as to grant to the ICRC unrestricted access to all parts of the country and the right to visit all prisoners in accordance with its established criteria.

3. The General Assembly further called upon the Afghan authorities to investigate thoroughly the fate of disappeared persons, to apply amnesty decrees equally to foreign detainees, to reduce the period during which prisoners await trial, to treat all prisoners, especially those awaiting trial or in custody in juvenile rehabilitation centres, in accordance with the Standard Minimum Rules for the Treatment of Prisoners, and to apply to all convicted persons Article 14, paragraphs 3 (d) and 5 of the International Covenant on Civil and Political Rights.

4. The General Assembly also appealed to all Member States, humanitarian organizations and all parties concerned to cooperate fully in order to facilitate the return of refugees and displaced persons to their homes in conformity with the Agreements on the Settlement of the Situation Relating to Afghanistan, and to promote the implementation of projects relating to repatriation of refugees.

(c) *Iran*⁹

1. During the course of 1990, the Special Representative of the Commission on Human Rights paid two visits to Iran and presented two reports pursuant to those visits (E/CN.4/1990/24 and A/45/697), which, according to the General Assembly, “provided useful information and clarified a number of allegations” about the situation of human rights in Iran.

2. The Commission on Human Rights also adopted at its 1990 session resolutions 1990/79 and 1990/76 of 7 March 1990 relative to this topic; so did the Economic and Social Council resolution 1990/48 of 25 May 1990.

9. On 15 December 1989 the General Assembly adopted without a vote resolution 44/163 entitled “Situation of Human Rights in the Islamic Republic of Iran”, following the interim report of the Special Representative of the UN Commission on Human Rights on this question (E/CN.4/1989/26) and Iran’s invitation to the Special Representative to visit Iran (A/C.3/44/19).

3. The General Assembly, in its resolution 45/173 of 18 December 1990, called upon Iran to intensify its efforts to investigate and rectify the human rights issues raised by the Special Representative in his observations, in particular, as regards the administration of justice and due process of law in order to comply with international instruments on human rights, including the International Covenant on Civil and Political Rights (to which Iran is a party). The Assembly, while noting that the cooperation of Iran with the Special Representative had improved and had replied to allegations transmitted to it by the latter, urged the Government of Iran to reply in detail to all allegations referred to by the Special Representative.

6. IRAQ INVASION OF KUWAIT

1. Between 2 August 1990, the date of the invasion of Kuwait by Iraq, and 29 November 1990, the Security Council adopted 12 resolutions relating to the situation between Iraq and Kuwait. With the exception of resolutions 660, 662, 665 and 669¹⁰, it was specified in all these resolutions that the Security Council was acting under Chapter VII of the UN Charter when those decisions were taken.

2. By *resolution 660* of 2 August 1990¹¹, the Security Council, determining that there existed “a breach of international peace and security” as regards the Iraqi invasion of Kuwait, and acting under Articles 39 and 40 of the Charter of the United Nations, condemned the Iraqi invasion of Kuwait and demanded that Iraq withdraw immediately and unconditionally all its forces to the positions in which they were located on 1 August 1990.

3. By *resolution 661* of 6 August 1990¹², the Security Council decided to impose a comprehensive set of mandatory sanctions on Iraq and Kuwait: All States “shall prevent” (i) the import of all commodities and products originating in Iraq and Kuwait; (ii) the sale or supply of any commodities or products to any person or body in Iraq or Kuwait; (iii) any activities by nationals of all States which would promote or could be calculated to promote the export or trans-shipment of any commodities or products from or to Iraq or Kuwait, as well as the prohibition of the transfer of any funds

10. Resolution 660 referred specifically to Articles 39 and 40 which are under Chapter VII of the Charter; Resolution 669 referred specifically to Article 50 of Chapter VII.

11. Adopted by a vote of 14 in favour and none against; Yemen did not participate in the vote.

12. Adopted by a vote of 13 in favour, none against and two abstentions (Cuba and Yemen).

or any other financial or economic resources to Iraq or occupied Kuwait. A Committee of the Security Council was established thereunder to examine reports on the implementation of the resolution, and to seek from all States further information regarding the action taken by them. The imposed sanctions were further complemented and reinforced in subsequent resolutions including *resolution 665* of 25 August 1990¹², which provided for the enforcement at sea of the trade embargo; *resolution 666*¹² of 13 September 1990, which related to the delivery of medical supplies and foodstuffs in humanitarian circumstances; *resolution 670* of 25 September 1990¹³, which contained a cargo-related air embargo.

4. By *resolution 662* of 9 August 1990¹⁴, the Security Council decided that annexation of Kuwait by Iraq under any form and whatsoever pretext had no legal validity, and was considered null and void, and called upon all States, international organizations and specialized agencies not to recognize that annexation, and to refrain from any action or dealing that might be interpreted as an indirect recognition of the annexation.

5. By its *resolution 664* of 18 August 1990¹⁴, the Security Council demanded that Iraq permit and facilitate the immediate departure from Kuwait and Iraq of the nationals of third countries and grant immediate and continuing access of consular officials to such nationals; also demanded that Iraq take no action to jeopardise the safety, security or health of such nationals.

6. By its *resolution 667* of 16 September 1990¹⁴, the Council *inter alia* strongly condemned aggressive acts perpetrated by Iraq against diplomatic premises and personnel in Kuwait, including the abduction of foreign nationals who were present in those premises; and further demanded that Iraq immediately protect the safety and well-being of diplomatic and consular personnel and premises in Kuwait and in Iraq and take no action to hinder the diplomatic and consular missions in the performance of their functions, including access to their nationals and the protection of their persons and interests.

7. By its *resolution 669* of 26 September 1990¹⁴, the Council entrusted the Sanctions Committee established under resolution 661 (1990), with the task of examining requests for assistance under the provisions of Article 50 of the Charter and making recommendations to the President of the Security Council for appropriate action.

13. Adopted by a vote of 14 in favour and one against (Cuba).

14. Adopted by unanimous vote.

8. By its *resolution 674* of 29 October 1990¹⁵, the Council *inter alia* demanded that Iraq cease and desist from taking third-State nationals hostage, mistreating and oppressing Kuwait and third-State nationals and any other actions that violate the decisions of the Council, the UN Charter, the Fourth Geneva Convention, the Vienna Conventions on Diplomatic and Consular Relations and international law. It invited States to collate information on the "grave breaches" by Iraq as per above; demanded that Iraq ensure access to food, water and basic services to Kuwaiti nationals and nationals of third States in Kuwait and Iraq. The Security Council reminded Iraq that the latter was liable for any loss, damage or injury arising in regard to Kuwait and third States, and their nationals and corporations, as a result of the invasion and illegal occupation of Kuwait by Iraq; invited States to collect relevant information regarding their claims, and those of their nationals and corporations, for restitution or financial compensation by Iraq with a view to such arrangements as may be established in connection with international law.

9. By its *resolution 677* of 28 November 1990¹⁶, the Security Council condemned the attempts by Iraq to alter the demographic composition of the population of Kuwait and to destroy the civil records maintained by Kuwait; and mandated the Secretary-General of the United Nations to take custody of a copy of the authenticated population register of Kuwait as of 1 August 1990.

10. By its *resolution 678* of 29 November 1990¹⁷, the Security Council decided, while maintaining all its decisions, to allow Iraq one final opportunity, as a pause of goodwill, to comply with all its relevant resolutions, and authorized Member States cooperating with the Government of Kuwait, unless Iraq on or before 15 January 1991 fully implemented all relevant Council resolutions, to "use all necessary measures" to uphold and implement all such resolutions and to restore international peace and security in the area. All States were requested to provide support for the actions undertaken in pursuance of the above provisions of the Council.

15. Adopted by a vote of 13 in favour, none against and two abstentions (Cuba and Yemen).

16. Adopted by unanimous vote.

17. Adopted by a vote of 12 in favour, two against (Cuba and Yemen) and one abstention (China).

7. LAW OF THE SEA¹⁸

1. The 1982 United Nations Convention on the Law of the Sea, which was signed by 159 States and entities (Niue and the European Economic Community), have been ratified or acceded to (as of August 1991) by some forty States.

2. The Secretary-General has initiated consultations amongst interested States to promote dialogue aimed at achieving universal participation in the Convention.

3. The General Assembly, in its resolution 45/145 adopted on 14 December 1990¹⁹, called upon States to ratify or accede to the 1982 Convention to allow the effective entry into force of the new legal regime and also to safeguard the unified character of the Convention and related resolutions adopted therewith and apply them in a manner consistent with that character and with their object and purpose, and also called upon States to observe the provisions of the Convention when enacting their national legislation.

8. FISHERIES

1. The General Assembly adopted without a vote resolution 45/197 entitled "Large-scale pelagic driftnet fishing and its impact on the living marine resources of the world's oceans and seas" on 21 December 1990. The Assembly reaffirmed its resolution 44/225 and called for its full implementation by all members of the international community, in accordance with the measures and time-frame elaborated in paragraph 4 of that resolution concerning large-scale pelagic driftnet fishing on the high seas of all the world's oceans and seas, including enclosed or semi-enclosed seas²⁰. It also reaffirmed the importance of all members of the international community taking such measures as may be necessary to ensure compliance with paragraph 4(c) of resolution 44/225.

18. Each year the Secretary-General prepares a report which provides a survey of all relevant activities in the field. The 1990 report is contained in A/45/721.

19. In a recorded vote, 140 in favour, no objection with six abstentions.

20. Paragraph 4 of resolution 44/255 recommended that all members of the international community agree to: (a) under certain specific conditions specified therein, moratoria on all large-scale pelagic driftnet fishing in the high seas by 30 June 1992; (b) take immediate action to reduce progressively large-scale pelagic driftnet fishing activities in the South Pacific region leading to the cessation of such activities by no later than 1 July 1991; (c) an immediate cessation to further expansion of large-scale pelagic driftnet fishing on the high seas of the North Pacific and all the other high seas outside the Pacific Ocean.

9. ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

1. The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 came into force on 11 November 1990 after receiving the necessary number of acceptances.
2. In its resolution 45/146 the General Assembly urged States that have not yet done so to proceed as soon as possible to ratify or to accede to the Convention, and also urged States to establish the necessary legislative and administrative measures so that their internal juridical regulations may be compatible with the spirit and the scope of the Convention. States were also invited, to the extent that they are able to do so, to apply provisionally, the measures set forth in the Convention, pending its entry into force for each of them, and in particular, to bear in mind the advisory services available for this purpose from the United Nations Secretariat (Division of Narcotic Drugs).

10. INTERNATIONAL MUTUAL ASSISTANCE IN CRIMINAL MATTERS: MODEL TREATIES

1. The General Assembly, on 14 December 1990, adopted the following model treaties in the field of international criminal law: (i) Model Treaty on Extradition; (ii) Model Treaty on Mutual Assistance in Criminal Matters; (iii) Model Treaty on the Transfer of Proceedings in Criminal Matters; (iv) Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released. (The text of the model Treaty is annexed respectively to General Assembly resolution 45/116, 45/117, 45/118, 45/119). In adopting these model instruments, the General Assembly was convinced that the establishment of bilateral and multilateral agreements on these matters would greatly contribute to developing more effective international cooperation in the relevant area.

11. PRINCIPLE OF PERIODIC AND GENUINE ELECTIONS

1. By its resolution 45/150 on enhancing the effectiveness of the principle of periodic and genuine elections ²¹ the General Assembly underscored

21. The resolution was adopted on 18 December 1990 by the General Assembly by a recorded vote of 129 in favour, eight against (Angola, China, Colombia, Cuba, Iran, Myanmar, Sudan, Vietnam) and nine abstentions.

the significance of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which established that the authority to govern should be based on the will of the people, as expressed in periodic and genuine elections.

2. The Assembly stressed the conviction that periodic and genuine elections are a necessary and indispensable element of sustained efforts to protect the rights and interests of the governed and that, as a matter of practical experience, the right of everyone to take part in the government of his or her country is a crucial factor in the effective enjoyment by all of a wide range of other human rights and fundamental freedoms, embracing political, economic, social and cultural rights.

3. The Assembly further declared that determining the will of the people required an electoral process that would provide an equal opportunity for all citizens to become candidates, and put forward their political views, individually and in cooperation with others, as provided in national constitutions and laws.

4. At the same time, the Assembly recognized that the efforts of the international community to enhance the effectiveness of the principle of periodic and genuine election should not call into question each State's sovereign rights freely to choose and develop its political, social, economic and cultural systems, whether or not they conform to the preferences of other States. The Assembly also expressed the view that the international community should continue to give serious consideration to ways in which the United Nations can respond to the requests of Member States as they seek to promote and strengthen their electoral institutions and procedures.

12. RIGHTS OF THE CHILD²²

1. The Convention entered into force on 2 September 1990.

2. In its resolution 45/104 adopted on 14 December 1990 the General Assembly called upon all States that have not done so to sign, ratify or accede to the Convention as a matter of priority; emphasized the importance of the strictest compliance of State parties with their obligations under the Convention; recognized the importance of the establishment of the Committee on the Rights of the Child as an essential mechanism for

22. Adopted by General Assembly resolution 44/25 of 20 November 1989.

overseeing the effective implementation of the provisions of the Convention.

13. ANTARCTICA²³

1. At its 45th session, the General Assembly adopted resolution 45/78 on 12 December 1990²⁴, in which it expressed regret that, despite the numerous resolutions it had adopted, the Secretary-General or his representative had not been invited to the meetings of the Antarctic Treaty Consultative Parties (ATCP) and urged again the Consultative Parties to invite the Secretary-General to their future meetings; and called upon the ATCP to deposit information and documents covering all aspects of Antarctica with the Secretary-General.

2. The General Assembly also expressed the conviction that any move to draw up a comprehensive environmental convention on the conservation and protection of Antarctica and its dependent and associated ecosystems as well as establishing a nature reserve or world park must be negotiated with the full participation of the international community and in the context of the UN system, including the UN Conference on Environment and Development (UNCED); urged all members of the international community to support all efforts to ban prospecting and mining in and around Antarctica and to ensure that all activities are carried out exclusively for the purpose of peaceful scientific investigation and that all such activities ensure the maintenance of international peace and security in Antarctica and that protection of its environment is for the benefit of all mankind.

14. RIGHTS OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

1. The General Assembly on 18 December 1990 adopted the International Convention on the Protection of the Rights of All Migrant Workers and

23. This issue was included in the General Assembly's agenda item in 1983 at the request of Malaysia and Antigua and Barbuda. A "comprehensive, factual and objective" study on all aspects of Antarctica was prepared by the Secretary-General in 1984. The relevant General Assembly decisions are as follows: resolutions 38/77; 39/152; 40/156 A to C; 41/88C; 42/46B; 43/83B; 44/124B.

24. Part A of the resolution was adopted by 98 in favour, no objection with seven abstentions and Part B was adopted by 107 in favour, no objection with seven abstentions.

Members of their Families²⁵ (the text of the Convention was annexed to GA resolution 45/158).

2. The Convention contains nine parts: Part I, scope and definition (articles 1 to 6); Part II, non-discrimination with respect to rights (article 7); Part III, human rights of all migrant workers and members of their families (articles 8 to 35); Part IV, other rights of migrant workers and members of their families (articles 36 to 56); Part V, provisions applicable to particular categories of migrant workers and members of their families (articles 57 to 63); Part VI, promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (articles 64 to 71); Part VII, application of the Convention (articles 72 to 78); Part VIII, general provisions (articles 79 to 84); Part IX, final provisions.

3. For the purpose of reviewing the application of the Convention, the establishment of a Committee of 14 experts is envisaged under the Convention. The Committee is empowered under the Convention to examine the reports submitted by States parties and to transmit such comments it may consider appropriate to the State party concerned which may then submit to the Committee observations on any comment made by the Committee.

4. Under Article 76, a State party may, at any time, declare that it recognizes the competence of the Committee to receive and consider communications to the effect that a State party declares that another State party is not fulfilling its obligations under the Convention. The provisions of Article 76 come into force when ten State parties have made the necessary declaration.

15. CONSULAR FUNCTIONS

1. In April 1990, Austria and Czechoslovakia proposed the elaboration of an additional protocol on consular functions to the 1963 Vienna Convention on Consular Relations (A/45/141). They were of the view that the 1963 Convention concentrated on consular privileges and immunities and lacked precise rules regarding consular functions, and that this lacuna was filled by a large number of bilateral consular agreements. It was therefore

25. In 1979, the General Assembly established a working group open to all Member States to establish an international instrument on the subject. It held nine inter-sessional meetings to complete its work (its formal report is contained in A/C.3/45/1).

timely to address the question of supplementing the provisions of the 1963 Convention in the light of the practice. They suggested that the new instrument might address such issues as communication and contact with nationals of the sending States; issuance of passports, visas and travel documents; acting as notary and civil registrar; safeguarding interests of activities in cases of succession; representing nationals before tribunals and other authorities, etc.

2. At its 45th session, the General Assembly took note with interest of the proposal and requested the Secretary-General to seek the views of Member States as well as of other States parties to the 1963 Convention on the proposal, and to prepare a report for its 46th session in 1991.

16. UNITED NATIONS DECADE OF INTERNATIONAL LAW ²⁶

1. The Sixth Committee established a Working Group with a view to preparing generally acceptable recommendations for the Decade.

2. The Working Group adopted a report (A/C.61/45/L.5). On the basis of the report, the Sixth Committee adopted the program for the activities to be commenced during the first term (1990–1992) of the Decade (which was annexed to GA resolution 45/40 of 28 November 1990).

3. The General Assembly, *inter alia*, appealed to States, international organizations and non-government organizations working in this field and to the private sector to make financial contributions or contributions in kind for the purpose of facilitating the implementation of the Programme for the activities of the Decade.

17. INTERNATIONAL CRIMINAL JURISDICTION

1. The International Law Commission considered this question at its 42nd session in 1990 in the context of the draft Code of Crimes against the

26. By its resolution 44/23 of 17 November 1989, the General Assembly declared the period 1990–1999 the UN Decade of International Law. The main purpose of the Decade, according to resolution 44/23, should be: (a) to promote acceptance of and respect for the principles of international law; (b) to promote means and methods for the peaceful settlement of disputes between States, including resort to, and full respect for, the International Court of Justice; (c) to encourage the progressive development of international law and its codification; (d) to encourage the teaching, study, dissemination and wider appreciation of international law.

peace and security of mankind. The possible creation of an international criminal jurisdiction to enforce the provisions of the draft Code has been the Commission's concern and has come up in the discussions during its previous sessions since 1986. In 1989, the General Assembly by its resolution 44/39 entitled "International criminal responsibility of individuals and entities engaged in illicit trafficking in narcotic drugs across international frontiers and other jurisdictional criminal activities: establishment of an international criminal court with jurisdiction over such cases", requested the ILC to address the question of establishing an international criminal court or other international criminal trial mechanisms with jurisdiction over persons alleged to have committed crimes which may be covered under such a Code of Crimes, including persons engaged in illicit trafficking of narcotic drugs across national frontiers.

2. At its 42nd session, the Commission adopted provisionally an article to be included in the draft Code. In its report (*ILC Report on the work of its forty-second session, 1990*, paras. 103–156), the ILC included a summary of previous UN efforts in the field of international criminal jurisdiction and the views of the Commission on the question posed. The Commission gave its views on (a) the advantages and disadvantages, for the trial of crimes against the peace and security of mankind, of the possible establishment of an international criminal court as compared, in particular, to the system of universal jurisdiction used on prosecution before national tribunals; (b) the possible options and main trends evidenced in the Commission with regard to certain areas related to the creation of an international criminal court (e.g., jurisdiction and competence, structure, legal force of judgements, etc.). The Commission concluded that its examination of the question reflected a broad agreement, in principle, on the desirability of the establishment of a permanent international criminal court to be brought into relationship with the UN system. Different views were, however, expressed as to the structure and scope of jurisdiction of such a court. The Commission gave the view that such a court would be successful only if widely supported by the international community.

3. Three possible models were mentioned by the Commission, which were as follows:

A. International Criminal Court with exclusive jurisdiction

(a) States would need to cede their criminal jurisdiction as regards crimes coming under the jurisdiction of the court.

(b) It may raise problems in relation to existing treaty obligations establishing universal jurisdiction under national tribunals.

(c) Recourse to a review procedure within the court's system has to be provided for, e.g., Article 14, paragraph 5 of the International Covenant on Civil and Political Rights.

(d) The establishment of a system of pre-trial examination and of a public prosecutor would be needed. It also needs rules for the handing over of the accused to the court as well as an agreement on the establishment of an international detention facility and rules on enforcing the judgement.

(e) It also raises the question of reciprocity (States parties to the statute of the court, States not parties) and the question that the jurisdiction of the court may depend on the consent of the States concerned (territorial State, States whose national is accused, State where the accused is found).

B. Concurrent jurisdiction between an international criminal court and national courts

(a) States parties would not have to cede their national criminal jurisdiction but could decide on a case-by-case basis whether to submit a case to the international criminal court or exercise national jurisdiction. For instance, according to this model, some States may choose to exercise national jurisdiction in cases where their own nationals are involved, where the crime was directed against them or where the crime was committed in their territory.

(b) Such a system could lead to conflicts of jurisdiction between the States concerned.

(c) All the other aspects of model A will apply to model B (prosecution, appeal, handing over of the accused, implementation of judgements, reciprocity).

C. An international criminal court having only a review competence

(a) States parties would not have to cede their national criminal jurisdiction.

(b) They would have to accept that judgements of their courts on crimes

coming under the Code could be brought for review to the international criminal court.

(c) In addition to those who could bring a case before the court under the other two models, namely, other States concerned (territorial State, State whose national has been tried, States against which the crime was directed) or all States parties to the court's statute, this model could allow for the possibility of the convicted individual bringing a case.

(d) This model would not interfere with existing international obligations on universal jurisdiction; it would not require the consent of other States.

(e) It would not require a further procedure for appeal.

(f) It would establish a permanent international criminal court, the scope of which could be extended if States have gained some experience with the court and agree to do so.

4. The Sixth Committee considered this question in connection with the work of the Commission and the draft Code of Crimes against the peace and security of mankind (agenda item 140). The following paragraphs summarize the main divergent views expressed by members of the Sixth Committee.

5. Some representatives were of the view that the establishment of a standing international criminal court would be of great importance at the legal, political and practical levels marking a significant step forward (A/C.6/45/SR.35, para. 28). International criminal law should, in their view, embrace all three elements: crime, penalties and jurisdiction. It would not therefore make sense to elaborate a code of crimes against the peace and security of mankind without also establishing a mechanism to ensure its implementation. Recent developments in international relations made the establishment of such a jurisdiction more feasible than when the matter had been studied earlier. The international community had gradually grown more aware that certain international crimes had achieved such wide dimensions that they could endanger the very existence of States and seriously compromise international peaceful relations. Thus, the establishment of an international criminal jurisdiction could offer the following advantages: uniform application of the law, the avoidance of unilateral, arbitral interpretations of the Code by certain States, given the highly political nature of the charges that could be brought under the Code; the release of pressure which might otherwise be exerted on the judicial system of the smaller States by perpetrators of such major crimes as drug trafficking on a large scale (SR.33/16; 35/144; 31/75).

6. It was however stressed by some States that any international criminal jurisdiction should not be linked to political currents, and that its judges should retain their independence and integrity. Otherwise, no state would be willing to concede its own criminal jurisdiction in respect of any individual or group which had committed grave crimes against its people or territory. The following elements were considered necessary to obtain the objectives: (i) an instrument defining a limited number of very serious crimes and establishing the penalties to be applied; and (ii) a well-structured international criminal court with guaranteed independence and impartiality, and capable of ensuring adequate application of the Code (SR.33/79; 36/21–23; 38/8 and 17).

7. On the other hand, some States expressed serious reservations about the idea of establishing an international criminal jurisdiction. Attention was first drawn to previous occasions on which the question was discussed and no agreement was possible.²⁷ Despite the improvement in international relations, profound differences still divided States with respect to various aspects of the issue, particularly the jurisdiction of the proposed court. Even if such differences were overcome, jurisdiction could not, under the domestic legislation of many States, be transferred from domestic courts to an international court. In this regard, reference was thus made to the adoption of the 1988 Convention against illicit traffic in narcotic drugs and psychotropic substances; the signatories to the Convention could only agree to take the necessary steps in accordance with their domestic legislation to promote international cooperation in that field (SR.34/27–29; 36/79; 38/2; 37/75).

8. Moreover, the subject was highly controversial, given the existence of different legal systems and the likelihood that conflicts would arise with respect to the various aspects that would have to be considered in creating an international criminal jurisdiction. The current international situation had little impact on the profound differences of views regarding the scope of the proposed court and it was thus premature to link the draft Code to such a mechanism.

9. Some states also felt that effective systems based on the universal jurisdiction of domestic courts existed for a large number of crimes, and that the establishment of an international criminal court must not disrupt the satisfactory functioning of the existing systems and would meet with

27. These occasions were summarized in the Commission's report: *ILC Report 1990*, paras. 103–115.

resistance, since it would be seen by many as a serious curtailment of national sovereignty. The conclusion of extradition and mutual assistance treaties dealing with various types of proceedings was considered more preferable.

18. INTERNATIONAL LAW COMMISSION²⁸

1. The International Law Commission held its 42nd session at the UN Office at Geneva from 1 May to 20 July 1990. Its agenda included: filling of a casual vacancy in the Commission (Mr Alain Pellet was elected to fill the vacancy caused by the death of Mr Paul Reuter); state responsibility; jurisdictional immunities of States and their property; draft code of crimes against the peace and security of mankind; the law of non-navigational uses of international watercourses; international liability for injurious consequences arising out of acts not prohibited by international law; relations between States and international organizations (second part of the topic); programme, procedures and working methods of the Commission, and its documentation.²⁹

2. The General Assembly adopted resolution 45/41 on 28 November 1990 on *Report of the International Law Commission on the Work of its Forty-second session*. The Assembly requested the ILC, *inter alia*, to pay special attention to indicating in its annual report, for each topic, those specific issues on which expressions of views by Governments, either in the Sixth Committee or in written form, would be of particular interest for the contribution of its work.

28. The International Law Commission is an expert group of 34 members in their personal capacity established by the General Assembly in 1947. For a summary of part of its work, see *The Work of the International Law Commission*. United Nations, New York: 1988, 4th ed., 402 pp. (UN Sales No. E.88.v.1.). The proceedings of the Commission are published in the Yearbook of the International Law Commission, Volume One containing the summary records of the discussions, Volume Two Part One containing the reports prepared by the Rapporteurs, and Volume Two Part Two containing the (annual) report of the Commission on its work.

29. See *Report of the International Law Commission on the work of its forty-second session*, 1 May–20 July 1990, General Assembly Official Records: Forty-fifth session, Supplement No. 10 (A/45/10) (Hereinafter referred to as *ILC Report*, 1990).

19. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL)³⁰

1. The agenda of the Commission at its 23rd session in 1990, included: countertrade; international payments; new international economic order; international contract practices; legal problems of electronic data interchange; training and assistance.

2. At its 45th session in 1990, the General Assembly, *inter alia*, reaffirmed the importance, particularly for developing countries, of the work of the Commission with respect to training and assistance in the field of international trade law and the desirability for it to sponsor seminars and symposia for that purpose. States were invited by the Assembly to consider signing, ratifying or acceding to the Conventions elaborated under the auspices of the Commission, including the Convention on the Limitation Period in the International Sale of Goods, 1974; the United Nations Convention on Contracts for the International Sale of Goods, 1980; the UN Convention on the International Bills of Exchange and International Promissory Notes, 1988.

20. SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (THE CHARTER COMMITTEE)³¹

1. Under the question of the maintenance of international peace and security, the Committee received two proposals on fact-finding submitted respectively by Belgium, FRG, Italy, Japan, New Zealand and Spain (A/AC.182/L.60/Rev.1), and by Czechoslovakia and the German Democratic Republic (A/AC.182/L.62/Rev.1); they were then merged into one

30. UNCITRAL was created in 1966 by General Assembly resolution 2205 (XXI) as the core legal body within the UN system to coordinate legal activities in the field of international trade law in order to avoid duplication of effort and to promote efficiency, consistency and coherence in the unification and harmonization of international trade law, and to maintain close cooperation with the other international institutions and organizations, including regional organizations, active in the field of international trade law. The Commission has 36 member States who are elected for a term of six years. *Report of the United Nations Commission on International Trade Law on the work of its twenty-third session. 25 June–26 July 1990, General Assembly Official Records: Forty-fifth session, Supplement No. 17 (A/45/17) hereinafter referred to as UNCITRAL Report, 1990.*

31. The Charter Committee, with 47 member States, was created by the General Assembly in 1975. The Assembly sets out the work program of the Committee annually after having received a report of the Committee on its work.

proposal (A/AC.182/L.66) entitled: "Fact-finding by the United Nations in the field of the maintenance of international peace and security."³²

2. According to this proposal, either the Security Council, the General Assembly or the Secretary-General may initiate a fact-finding mission in the context of their respective responsibilities. States were encouraged to give their consent to admit a proposed mission. Special reference was made in the proposal to the Secretary-General's capacity in information-gathering particularly for the purpose of early warning.

3. At its 45th session, the General Assembly, by resolution 45/44, requested the Charter Committee at its 1991 session to endeavour to complete its consideration of the proposal on fact-finding with a view to submitting its conclusions, in an appropriate form, to the General Assembly at its 46th session.

4. The Charter Committee was also requested to continue its work on the question of the peaceful settlement of disputes between States and, in this context, to consider proposals relating to this question that might be submitted to the Special Committee and to consider the final text of the draft handbook on the peaceful settlement of disputes between States prepared by the Secretary-General.³³

5. Since 1985, the Charter Committee has been actively working on the question of rationalization of existing procedures of the United Nations. As a result of intensive work, it completed at its 1990 session the document on the subject and submitted it to the General Assembly for consideration and adoption.³⁴ The Assembly approved the "conclusions" of the Charter Committee and decided by its resolution 45/45³⁵ to reproduce it as an annex to its rules of procedures.³⁶

32. *Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization*. General Assembly Official Records: Forty-fifth session, Supplement No. 33 (A/45/33). For text of the proposals, see para. 68.

33. The Committee later considered this final text which is reproduced in its subsequent Report: GAOR 46th sess., Suppl. No. 33 (A/46/33) Annex (pp. 23–220), and recommended its publication.

34. Report n. 31, paras. 83–86.

35. The resolution was adopted by a recorded vote of 149-0-1 (Cuba).

36. The text is annexed to General Assembly resolution 45/45 of 28 November 1990.