

INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING QUESTIONS OF INTERPRETATION AND  
APPLICATION OF THE 1971 MONTREAL CONVENTION ARISING  
FROM THE AERIAL INCIDENT AT LOCKERBIE

(LIBYAN ARAB JAMAHIRIYA V. UNITED STATES OF AMERICA)

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DOCUMENTARY EXHIBITS

SUBMITTED BY

THE UNITED STATES OF AMERICA

Volume II of II

Exhibits 23 to 61

20 JUNE 1995

**EXHIBITS TO THE MEMORIAL OF THE  
UNITED STATES OF AMERICA**

- Exhibit 1. Letter dated 23 December 1991 from the Acting Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General (United Nations Document A/46/83-S/23317).
- Exhibit 2. United Nations Press Release: Security Council Condemns Destruction of Pan Am Flight 103 (United Nations Document SC/5057; 30 December 1988).
- Exhibit 3. United States Code, Title 28, Sections 1861 through 1869.
- Exhibit 4. United States Federal Rules of Criminal Procedure, Rules 6 through 9.
- Exhibit 5. Jury Selection Plan for the United States District Court for the District of Columbia (as amended through 9 September 1993).
- Exhibit 6. U.S. Department of Justice Memorandum: Summary of Criminal Procedure in Federal Criminal Cases in the United States.
- Exhibit 7. United States Code, Title 18, Section 32  
(Destruction of aircraft or aircraft facilities).  
  
United States Code, Title 18, Section 844 (Malicious destruction of property used in or affecting interstate or foreign commerce, causing deaths).  
  
United States Code, Title 18, Section 2332  
(Terrorist murders of United States nationals outside the United States; this section was codified as United States Code, Title 18, Section 2331 until October 29, 1992).  
  
United States Code, Title 18, Section 371  
(Conspiracy to commit criminal offense).
- Exhibit 8. Letter dated 20 December 1991 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the Secretary-General (United Nations Document A/46/826-S/23307; 31 December 1991).

- Exhibit 9. Letter dated 20 December 1991 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General (United Nations Document A/46/827-S/23308; 31 December 1991).
- Exhibit 10. Letter dated 20 December 1991 from the Permanent Representative of France to the United Nations addressed to the Secretary-General (A/46/825-S/23306; 31 December 1991).
- Exhibit 11. Letter dated 20 December 1991 from the Permanent Representatives of France, the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations addressed to the Secretary-General (United Nations Document A/46/828-S/23309; 31 December 1991).
- Exhibit 12. Letter dated 17 November 1991 from the Permanent Representative of the Libyan Arab Jamahiriya to the United Nations addressed to the Secretary-General (United Nations Document A/46/660-S/23226; 20 November 1991).
- Exhibit 13. Letter dated 20 November 1991 from the Permanent Representative of the Libyan Arab Jamahiriya to the United Nations addressed to the Secretary-General (United Nations Document A/46/844-S/23416; 13 January 1992).
- Exhibit 14. Letter dated 8 January 1992 from the Permanent Representative of the Libyan Arab Jamahiriya to the United Nations addressed to the Secretary-General (United Nations Document A/46/841-S/23396; 9 January 1992).
- Exhibit 15. Letter dated 17 January 1992 from the Permanent Representative of the Libyan Arab Jamahiriya to the United Nations addressed to the President of the Security Council (United Nations Document S/23436; 17 January 1992).
- Exhibit 16. Letter dated 18 January 1992 from the Permanent Representative of the Libyan Arab Jamahiriya to the United Nations addressed to the President of the Security Council (United Nations Document S/23441; 18 January 1992).
- Exhibit 17. Convention for the Suppression of Unlawful Acts Against the Safety of International Civil Aviation, done at Montreal on 23 September 1971.

- Exhibit 18. Resolution 731, United Nations Security Council, 3033rd meeting, 21 January 1992 (United Nations Document S/RES/731).
- Exhibit 19. Provisional Verbatim Record of the Three Thousand and Thirty Third Meeting of the Security Council (United Nations Document S/PV.3033; 21 January 1992).
- Exhibit 20. Report by the Secretary-General Pursuant to Paragraph 4 of Security Council Resolution 731 (United Nations Document S/23574; 11 February 1992).
- Exhibit 21. Further Report by the Secretary-General Pursuant to Paragraph 4 of Security Council Resolution 731 (United Nations Document S/23672; 3 March 1992).
- Exhibit 22. Provisional Verbatim Record of the Three Thousand and Sixty-Third Meeting of the Security Council (United Nations Document S/PV.3063; 31 March 1992).
- Exhibit 23. Resolution 748, United Nations Security Council, 3063rd meeting, 31 March 1992, (United Nations Document S/RES/748).
- Exhibit 24. Note by the President of the Security Council (United Nations Document S/24424; 12 August 1992).
- Exhibit 25. Note by the President of the Security Council (United Nations Document S/24925; 9 December 1992).
- Exhibit 26. Note by the President of the Security Council (United Nations Document S/25554; 8 April 1993).
- Exhibit 27. Note by the President of the Security Council (United Nations Document S/26303; 13 August 1993).
- Exhibit 28. Letter dated 13 August 1993 from the representatives of France, the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations addressed to the Secretary-General (United Nations Document A/48/314-S/26304; 13 August 1993).
- Exhibit 29. Letter dated 22 September 1993 from the Permanent Representative of the Libyan Arab Jamahiriya to the United Nations Addressed to the Secretary-General (United Nations Document S/26500; 28 September 1993).

- Exhibit 30. United States cable dated 22 September 1993 from Washington, D.C. to United States Mission to the United Nations, New York.
- Exhibit 31. Letter dated 1 October 1993 from the Permanent Representative of the Libyan Arab Jamahiriya to the United Nations addressed to the Secretary-General (United Nations Document S/26523; 1 October 1993).
- Exhibit 32. Resolution 883, United Nations Security Council 3312th meeting, 11 November 1993, (United Nations Document S/RES/883).
- Exhibit 33. Provisional Verbatim Record of the Three Thousand Three Hundred and Twelfth Meeting of the Security Council (United Nations Document S/PV.3312; 11 November 1993).
- Exhibit 34. Resolution 286, United Nations Security Council, 1552nd meeting, 9 September 1970.
- Exhibit 35. Note by the President of the Security Council, (United Nations Document S/17554; 9 October 1985).
- Exhibit 36. Resolution 579, United Nations Security Council, 2637th meeting, 18 December 1985.
- Exhibit 37. Resolution 635, United Nations Security Council, 2869th meeting, 14 June 1989.
- Exhibit 38. Resolution 687, United Nations Security Council, 2981st meeting, 3 April 1991.
- Exhibit 39. Note by the President of the Security Council (United Nations Document S/23500; 31 January 1992).
- Exhibit 40. Statement by the President of the Security Council (United Nations Document S/PRST/1994/40; 29 July 1994).
- Exhibit 41. Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, Resolution 2625 (XXV), United Nations General Assembly, 1883rd Plenary Meeting, 24 October 1970.
- Exhibit 42. Aerial Hijacking or Interference with Civil Air Travel, Resolution 2645 (XXV), United Nations General Assembly, 1914th Plenary Meeting, 25 November 1970.

- Exhibit 43. Measures to Eliminate International Terrorism, Resolution 49/60, United Nations General Assembly, 84th Plenary Meeting, 9 December 1994 (United Nations Document A/RES/49/60; 17 February 1995).
- Exhibit 44. Note by the President of the Security Council (United Nations Document S/26861; 10 December 1993).
- Exhibit 45. Note by the President of the Security Council (United Nations Document S/PRST/1994/18; 12 April 1994).
- Exhibit 46. Note by the President of the Security Council (United Nations Document S/PRST/1994/41; 5 August 1994).
- Exhibit 47. Note by the President of the Security Council (United Nations Document S/PRST/1994/76; 30 November 1994).
- Exhibit 48. Note by the President of the Security Council (United Nations Document S/PRST/1995/14; 30 March 1995).
- Exhibit 49. Letter dated 28 July 1994 from the Secretary-General addressed to the President of the Security Council (United Nations Document S/1994/900; 29 July 1994).
- Exhibit 50. Letter dated 9 December 1993 from the Chargé D'Affaires A.I. of the Permanent Mission of the Libyan Arab Jamahiriya to the United Nations addressed to the Secretary-General (United Nations Document S/26859; 10 December 1993).
- Exhibit 51. Letter dated 30 March 1995 from the Permanent Representatives of France, the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations addressed to the Secretary-General. (United Nations Document A/50/128-S/1995/247; 30 March 1995).
- Exhibit 52. Review of the Role of the International Court of Justice, Report of the Sixth Committee (United Nations Document A/8238; 11 December 1970).
- Exhibit 53. Review of the Role of the International Court of Justice, Report of the Sixth Committee (United Nations Document A/8568; 10 December 1971).

- Exhibit 54. M. Lachs, "The Revised Procedure of the International Court of Justice" in Essays on the Development of The International Legal Order, pp. 21, 31 (1980).
- Exhibit 55. E. Jiménez de Aréchaga, "The Amendments to the Rules of Procedure of the International Court of Justice," 67 American Journal of International Law, pp. 1, 11, and 13 (1973).
- Exhibit 56. G. Guyomar, Commentaire du Règlement de la Cour Internationale de Justice: Interprétation et Pratique, p. 371 (1972).
- Exhibit 57. Resolution 827, United Nations Security Council, 3217th meeting, 25 May 1993 (United Nations Document S/RES/827).
- Exhibit 58. Resolution 955, United Nations Security Council, 3453rd meeting, 8 November 1994 (United Nations Document S/RES/955).
- Exhibit 59. Letter dated 5 August 1994 from the representatives of France, the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations addressed to the Secretary-General (United Nations Document A/49/299-S/1994/938; 8 August 1994).
- Exhibit 60. S. Rosenne, The Law and Practice of the International Court, p. 70 (1985).
- Exhibit 61. T. Elsen, Litispence Between the International Court of Justice and the Security Council, p. 59 (1986)

Exhibit 23

Resolution 748, United Nations Security Council,  
3063rd meeting, 31 March 1992  
(United Nations Document S/RES/748)





Security Council

Distr.  
GENERAL

S/RES/748 (1992)  
31 March 1992

RESOLUTION 748 (1992)

Adopted by the Security Council at its 3063rd meeting,  
on 31 March 1992

The Security Council,

Reaffirming its resolution 731 (1992) of 21 January 1992,

Noting the reports of the Secretary-General, 1/ 2/

Deeply concerned that the Libyan Government has still not provided a full and effective response to the requests in its resolution 731 (1992) of 21 January 1992,

Convinced that the suppression of acts of international terrorism, including those in which States are directly or indirectly involved, is essential for the maintenance of international peace and security,

Recalling that, in the statement issued on 31 January 1992 on the occasion of the meeting of the Security Council at the level of heads of State and Government, 3/ the members of the Council expressed their deep concern over acts of international terrorism, and emphasized the need for the international community to deal effectively with all such acts,

Reaffirming that, in accordance with the principle in Article 2, paragraph 4, of the Charter of the United Nations, every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when such acts involve a threat or use of force,

1/ S/23574.

2/ S/23672.

3/ S/23500.

Determining, in this context, that the failure by the Libyan Government to demonstrate by concrete actions its renunciation of terrorism and in particular its continued failure to respond fully and effectively to the requests in resolution 731 (1992) constitute a threat to international peace and security,

Determined to eliminate international terrorism,

Recalling the right of States, under Article 50 of the Charter, to consult the Security Council where they find themselves confronted with special economic problems arising from the carrying out of preventive or enforcement measures,

Acting under Chapter VII of the Charter,

1. Decides that the Libyan Government must now comply without any further delay with paragraph 3 of resolution 731 (1992) regarding the requests contained in documents S/23306, S/23308 and S/23309;

2. Decides also that the Libyan Government must commit itself definitively to cease all forms of terrorist action and all assistance to terrorist groups and that it must promptly, by concrete actions, demonstrate its renunciation of terrorism;

3. Decides that, on 15 April 1992 all States shall adopt the measures set out below, which shall apply until the Security Council decides that the Libyan Government has complied with paragraphs 1 and 2 above;

4. Decides also that all States shall:

(a) Deny permission to any aircraft to take off from, land in or overfly their territory if it is destined to land in or has taken off from the territory of Libya, unless the particular flight has been approved on grounds of significant humanitarian need by the Committee established by paragraph 9 below;

(b) Prohibit, by their nationals or from their territory, the supply of any aircraft or aircraft components to Libya, the provision of engineering and maintenance servicing of Libyan aircraft or aircraft components, the certification of airworthiness for Libyan aircraft, the payment of new claims against existing insurance contracts and the provision of new direct insurance for Libyan aircraft;

5. Decides further that all States shall:

(a) Prohibit any provision to Libya by their nationals or from their territory of arms and related material of all types, including the sale or transfer of weapons and ammunition, military vehicles and equipment, paramilitary police equipment and spare parts for the aforementioned, as well as the provision of any types of equipment, supplies and grants of licensing arrangements, for the manufacture or maintenance of the aforementioned;

/...

(b) Prohibit any provision to Libya by their nationals or from their territory of technical advice, assistance or training related to the provision, manufacture, maintenance, or use of the items in (a) above;

(c) Withdraw any of their officials or agents present in Libya to advise the Libyan authorities on military matters;

6. Decides that all States shall:

(a) Significantly reduce the number and the level of the staff at Libyan diplomatic missions and consular posts and restrict or control the movement within their territory of all such staff who remain; in the case of Libyan missions to international organizations, the host State may, as it deems necessary, consult the organization concerned on the measures required to implement this subparagraph;

(b) Prevent the operation of all Libyan Arab Airlines offices;

(c) Take all appropriate steps to deny entry to or expel Libyan nationals who have been denied entry to or expelled from other States because of their involvement in terrorist activities;

7. Calls upon all States, including States not members of the United Nations, and all international organizations, to act strictly in accordance with the provisions of the present resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to 15 April 1992;

8. Requests all States to report to the Secretary-General by 15 May 1992 on the measures they have instituted for meeting the obligations set out in paragraphs 3 to 7 above;

9. Decides to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council consisting of all the members of the Council, to undertake the following tasks and to report on its work to the Council with its observations and recommendations:

(a) To examine the reports submitted pursuant to paragraph 8 above;

(b) To seek from all States further information regarding the action taken by them concerning the effective implementation of the measures imposed by paragraphs 3 to 7 above;

(c) To consider any information brought to its attention by States concerning violations of the measures imposed by paragraphs 3 to 7 above and, in that context, to make recommendations to the Council on ways to increase their effectiveness;

(d) To recommend appropriate measures in response to violations of the measures imposed by paragraphs 3 to 7 above and provide information on a regular basis to the Secretary-General for general distribution to Member States;

(e) To consider and to decide upon expeditiously any application by States for the approval of flights on grounds of significant humanitarian need in accordance with paragraph 4 above;

(f) To give special attention to any communications in accordance with Article 50 of the Charter from any neighbouring or other State with special economic problems that might arise from the carrying out of the measures imposed by paragraphs 3 to 7 above;

10. Calls upon all States to cooperate fully with the Committee in the fulfilment of its task, including supplying such information as may be sought by the Committee in pursuance of the present resolution;

11. Requests the Secretary-General to provide all necessary assistance to the Committee and to make the necessary arrangements in the Secretariat for this purpose;

12. Invites the Secretary-General to continue his role as set out in paragraph 4 of resolution 731 (1992);

13. Decides that the Security Council shall, every 120 days or sooner should the situation so require, review the measures imposed by paragraphs 3 to 7 above in the light of the compliance by the Libyan Government with paragraphs 1 and 2 above taking into account, as appropriate, any reports provided by the Secretary-General on his role as set out in paragraph 4 of resolution 731 (1992);

14. Decides to remain seized of the matter.

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Exhibit 24

Note by the President of the Security Council  
(United Nations Document S/24424; 12 August 1992)



Security Council

Distr.  
GENERAL

S/24424  
12 August 1992

ORIGINAL: ENGLISH

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NOTE BY THE PRESIDENT OF THE SECURITY COUNCIL

After the consultations held on 12 August 1992, the President of the Security Council issued the following statement on behalf of the members in connection with the item relating to the Libyan Arab Jamahiriya:

"The members of the Security Council held informal consultations on 12 August 1992 pursuant to paragraph 13 of resolution 748 (1992), by which the Council decided to review every 120 days or sooner, should the situation so require, the measures imposed by paragraphs 3 to 7 against the Libyan Arab Jamahiriya.

"After hearing all the opinions expressed in the course of the consultations, the President of the Council concluded that there was no agreement that the necessary conditions existed for modification of the measures of sanctions established in paragraphs 3 to 7 of resolution 748 (1992)."

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Exhibit 25

Note by the President of the Security Council  
(United Nations Document S/24925; 9 December 1992)



**Security Council**

Distr.  
GENERAL

S/24925  
9 December 1992

ORIGINAL: ENGLISH

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NOTE BY THE PRESIDENT OF THE SECURITY COUNCIL

After the consultations held on 9 December 1992, the President of the Security Council issued the following statement on behalf of the members in connection with the item relating to the Libyan Arab Jamahiriya:

"The members of the Security Council held informal consultations on 9 December 1992 pursuant to paragraph 13 of resolution 748 (1992), by which the Council decided to review every 120 days or sooner, should the situation so require, the measures imposed by paragraphs 3 to 7 against the Libyan Arab Jamahiriya.

"After hearing all the opinions expressed in the course of the consultations, the President of the Council concluded that there was no agreement that the necessary conditions existed for modification of the measures of sanctions established in paragraphs 3 to 7 of resolution 748 (1992)."

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Exhibit 26

Note by the President of the Security Council  
(United Nations Document S/25554; 8 April 1993)



Security Council

Distr.  
GENERAL

S/25554  
8 April 1993

ORIGINAL: ENGLISH

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NOTE BY THE PRESIDENT OF THE SECURITY COUNCIL

After the consultations held on 8 April 1993, the President of the Security Council issued the following statement on behalf of the members in connection with the item relating to the Libyan Arab Jamahiriya:

"The members of the Security Council held informal consultations on 8 April 1993 pursuant to paragraph 13 of resolution 748 (1992), by which the Council decided to review every 120 days or sooner, should the situation so require, the measures imposed by paragraphs 3 to 7 against the Libyan Arab Jamahiriya.

"After hearing all the opinions expressed in the course of consultations, the President of the Council concluded that there was no agreement that the necessary conditions existed for modification of the measures of sanctions established in paragraphs 3 to 7 of resolution 748 (1992)."

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Exhibit 27

Note by the President of the Security Council  
(United Nations Document S/26303; 13 August 1993).



Security Council

Distr.  
GENERAL

S/26303  
13 August 1993

ORIGINAL: ENGLISH

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NOTE BY THE PRESIDENT OF THE SECURITY COUNCIL

After the consultations held on 13 August, the President of the Security Council issued the following statement on behalf of the members in connection with the item relating to the Libyan Arab Jamahiriya:

"The members of the Security Council held informal consultations on 13 August 1993 pursuant to paragraph 13 of resolution 748 (1992), by which the Council decided to review every 120 days or sooner, should the situation so require, the measures imposed by paragraphs 3 to 7 against the Libyan Arab Jamahiriya.

"After hearing all the opinions expressed in the course of consultations, the President of the Council concluded that there was no agreement that the necessary conditions existed for modification of the measures of sanctions established in paragraphs 3 to 7 of resolution 748 (1992)."

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Exhibit 28

Letter dated 13 August 1993 from the representatives of France,  
the United Kingdom of Great Britain and Northern Ireland  
and the United States of America to the United Nations  
addressed to the Secretary-General  
(United Nations Document A/48/314-S/26304; 13 August 1993)



General Assembly  
Security Council

Distr.  
GENERAL

A/48/314  
S/26304  
13 August 1993  
ENGLISH  
ORIGINAL: ENGLISH/FRENCH

GENERAL ASSEMBLY  
Forty-eighth session  
Item 142 of the provisional agenda\*  
MEASURES TO ELIMINATE INTERNATIONAL  
TERRORISM

SECURITY COUNCIL  
Forty-eighth year

Letter dated 13 August 1993 from the representatives of France,  
the United Kingdom of Great Britain and Northern Ireland and  
the United States of America to the United Nations addressed  
to the Secretary-General

We have the honour to transmit herewith the text of a tripartite declaration issued by our three Governments on 13 August 1993 (see annex) concerning the implementation of Security Council resolutions 731 (1992) and 748 (1992) by the Libyan Arab Jamahiriya.

We should be grateful if you would have the text of this letter and its annex circulated as a document of the General Assembly, under item 142 of the provisional agenda, and of the Security Council.

(Signed)

Jean-Bernard MERIMES  
Permanent Representative of  
France to the United Nations

(Signed)

Thomas RICHARDSON  
Chargé d'affaires a.i. of  
the Permanent Mission of  
the United Kingdom of Great  
Britain and Northern Ireland

(Signed)

Madeleine Korbel ALBRIGHT  
Permanent Representative of the  
United States of America to the  
United Nations

A/48/150.

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ANNEX

Declaration of the Governments of France, the United Kingdom  
of Great Britain and Northern Ireland and the United States  
of America on Libyan terrorism, issued on 13 August 1992

Over 16 months have passed since the Security Council imposed sanctions on the Libyan Government for failure to comply with its demands as set forth in United Nations Security Council resolution 731 (1992) that Libya commit itself concretely and definitively to cease all forms of terrorist action and all assistance to terrorist groups, agree to surrender the two accused of bombing Pan Am flight 103 for trial in Scotland or the United States, respond fully to the requests put forward by the French judge investigating the bombing of UTA flight 772, and provide evidence or information about the bombings of Pan Am flight 103 and UTA flight 772.

Today, for the fourth time, the Council has reviewed Libyan compliance with sanctions as called for in Security Council resolution 748 (1992) and found Libya once again to be in defiance of the will of the international community. Instead of seeking ways to cooperate with the Council and the Secretary-General of the United Nations, Libya has consistently sought ways to avoid full compliance.

The United States, the United Kingdom and France have observed with diminishing patience that the envoys of the Secretary-General of the United Nations to Tripoli repeatedly come back empty-handed, without indications of compliance although with many assurances of Libya's cooperation. We have waited the four months requested by the Secretary-General of the League of Arab States, who wished to serve as an intermediary between the international community and the Libyans. We have repeatedly rejected Libyan efforts to distract the international community from its lack of compliance with empty offers to surrender the Lockerbie suspects and to comply with the requirements of French justice and to prove their partial compliance with the Security Council's demands.

However, our three Governments, in the interests of giving Libya one last chance, have asked the Secretary-General of the United Nations to look into the matter and take the necessary steps to achieve the full implementation by the Libyan Government of resolution 731 (1992) within 40 to 45 days.

If, by October first, the Libyan Government has failed to comply with resolutions 731 (1992) and 748 (1992), including the transfer to United States or United Kingdom jurisdiction of the Lockerbie suspects and compliance with the requests of French justice on UTA flight 772, we will table a resolution strengthening the sanctions in key oil-related, financial and technological areas.

Once more, our three Governments reiterate that they have no hidden agenda and that, on the contrary, upon full implementation by Libya of Security Council resolutions 731 (1992) and 748 (1992), the conditions would be met for the lifting of sanctions by the Security Council.

Exhibit 29

Letter dated 22 September 1993 from the Permanent Representative  
of the Libyan Arab Jamahiriya to the United Nations  
addressed to the Secretary-General  
(United Nations Document S/26500; 28 September 1993)





Security Council

Distr.  
GENERAL

S/26500  
28 September 1993  
ENGLISH  
ORIGINAL: ARABIC

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LETTER DATED 22 SEPTEMBER 1993 FROM THE PERMANENT REPRESENTATIVE  
OF THE LIBYAN ARAB JAMAHIRIYA TO THE UNITED NATIONS ADDRESSED TO  
TO THE SECRETARY-GENERAL

I have the honour to refer to the letter dated 11 September 1993 from the Secretary of the General People's Committee for Foreign Liaison and International Cooperation and to the accompanying memorandum on points relating to the legal position of the Libyan Arab Jamahiriya with regard to Security Council resolutions 731 (1992) and 748 (1992), both of which were handed to you on 14 September 1993, and should be grateful if you would have them circulated as a document of the Security Council.

(Signed) Ali Ahmed ELHOUDERI  
Permanent Representative

Annex

Letter dated 11 September 1993 from the Secretary of the General  
People's Committee for Foreign Liaison and International  
Cooperation of the Libyan Arab Jamahiriya addressed to the  
Secretary-General

I refer to Security Council resolution 731 (1992) concerning the requests addressed to the Great Socialist People's Libyan Arab Jamahiriya by the United States of America, the United Kingdom and France.

I also refer to the fact that the Great Jamahiriya has declared that it accepts the aforesaid resolution and that it is fully prepared to deal with it in a positive manner and in a spirit of concern to bring the truth to light and of respect for international legitimacy. You are fully informed, Mr. Secretary-General, of the measures the Great Jamahiriya has taken to implement the provisions of the resolution in question. We have notified you, through your Personal Envoy and by our numerous letters, that we have implemented all the provisions of the resolution except for a single point relating to the venue of the trial, and we believe that it is possible to reach a satisfactory solution on this matter if the States concerned will agree to sit down directly with the Great Jamahiriya to negotiate thereon in order to bring about a trial that is just and fair.

Since the three Western States continue to insist that the Great Jamahiriya has not complied with resolution 731 (1992), most recently in their tripartite declaration of 13 August 1993, the Great Jamahiriya and the attorneys for the two suspects deem it appropriate to submit to you a set of questions to be put to them and to the members of the Security Council with a view to seeking a definitive clarification of the understanding that the three Western States have of the resolution so that the Great Jamahiriya may see what, in their view, are the points that it has not implemented and so that the resolution will not remain impending and capable of being used to blackmail the Great Jamahiriya for a long time into the future.

The response of the three Western States to the questions of the attorneys for the two suspects can be of assistance in reaching agreement on the venue of the trial.

Accordingly, we hope that you will present these questions to the States concerned and to the members of the Security Council with a view to obtaining a precise response, and we hope this will be a step towards a mutual understanding on devising a peaceful and satisfactory solution to a problem into which my country has been thrust and which has become an instrument for blackmail.

(Signed) Omar Mustafa ALMUNTASSER  
Secretary of the General People's Committee  
for Foreign Liaison and International Cooperation

Enclosure

MEMORANDUM TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

We have the honour to present our compliments and should like to submit to you the following memorandum setting forth legal points relating to the legal position of the Great Jamahiriya on Security Council resolutions 731 (1992) and 748 (1992).

Security Council resolution 748 (1992) was adopted on 21 March 1992, and it imposed iniquitous and unwarranted sanctions on the Jamahiriya merely on grounds of suspicion that Libyan individuals had committed acts against an aircraft belonging to the Pan American company and an aircraft belonging to the French company UTA.

Since the adoption of that resolution, which does not accord with the general norms of international law or established customary principles approved by the international community, the Jamahiriya has been striving diligently, in all sincerity and good faith, to settle the dispute. The dispute is not one between the Jamahiriya and the international community or the United Nations but is a controversy precipitated by the United States of America, the United Kingdom and France because of their dissatisfaction with the role assumed by the Jamahiriya.

Support for the liberation movements of peoples and for their right to freedom and overall and independent development does not entail an adversarial relationship between the Jamahiriya and the peoples and Governments of the three States. Indeed, the Jamahiriya constantly declares that it is prepared to interact with these States and others on a basis of honour, dignity and respect for the principles of justice, equity and national sovereignty.

The role undertaken by the Jamahiriya was a necessary and natural one at the juncture at which it found itself and in the context of the international and regional parameters then prevailing. It was never the intention thereby to depart from the norms approved by the international community to govern its intercourse and regulate its actions.

It was also not intended thereby to harm the interests of particular peoples. The Jamahiriya has a profound belief that the real interests of all peoples of the Earth are one and the same, and it concedes that they have an equal right to contribute to building a better future for mankind as part of a philosophy of human brotherhood and the unity of the human race combined with respect for distinctive characteristics and particular identities.

On this basis, Libya endeavours in all sincerity and earnestness to promote links of friendship and cooperation with all nations and peoples without distinction or discrimination. It does not consider itself to be in a state of conflict or enmity with any country that respects its sovereignty and its freedom to pursue the policy that accords with an outlook and interests of its own that do not violate the freedom and interests of others.

Despite the legitimate reservations the Jamahiriya entertains with regard to Security Council resolution 748 (1992) and despite its objection to those of its provisions that violate domestic and international law and are in discord with the established customary norms in the field of international politics, the Jamahiriya has expressed its intention and demonstrated its readiness by both word and deed to end this dispute and to cooperate with the Security Council and the Secretary-General of the United Nations with a view to settling the conflict and, indeed, turning a new page in its relations with the three Western States that have placed themselves in an adversarial position with regard to the Jamahiriya without objective justification.

In this context, the Jamahiriya has made a point of officially notifying the Security Council and the Secretary-General of the United Nations of its readiness to cooperate with the Council in a positive and constructive spirit, not by yielding to dictation and compulsion from any quarter but out of a desire to remove a contrived and transitory dispute from the orbit of international relations, and especially so at a time when the international community is endeavouring to create a climate for the establishment of a new kind of world solidarity imbued with a spirit of peace, cooperation and justice.

In our estimation, any international order must be based on the firm establishment of principles of sovereignty and political, economic, social and cultural independence, on conceding the right of all peoples, great and small, rich and poor, to develop their societies, on respect for human rights and on strengthening the foundations of democracy in the way that each people chooses and that it deems appropriate to its own circumstances and situation.

To that end, the Secretary of the General People's Committee for Foreign Liaison and International Cooperation addressed to you a number of letters, and we specifically recall those dated 9 January 1992, 27 February 1992, 14 May 1992, 19 July 1992, 9 August 1992, 14 August 1992, 21 August 1992 and 8 July 1993, in which he notified you of the measures taken by the Jamahiriya with regard to organizations and individuals engaged in activities characterized as terrorism. These measures included the severance of any contacts with such elements, refraining from providing them with any assistance and the closure of the camps they had been using in any way.

The Secretary for Foreign Liaison also requested you to dispatch a technical mission to verify Libya's compliance with the resolution and with those obligations that it bears, together with the international community, for the repudiation of terrorism. To its surprise, however, the Jamahiriya received no response from the Security Council or the Secretariat of the United Nations to this logical and spontaneous offer.

The failure to keep the question under consideration and the abandonment of the idea of sending a mission to verify implementation of the resolution was a position that we interpreted at the time, and that we still interpret, as meaning that the Security Council was persuaded that the Jamahiriya had carried out all of the measures entailed by the resolution.

Despite the foregoing, we renew the invitation to you promptly to dispatch the mission in question.

The Jamahiriya has expressed its readiness to reach an acceptable formula for the implementation of the other provisions of the resolution, and, as you are aware, it has taken initiatives to approach the States that have adopted an adversarial stance towards it.

For all of the foregoing reasons, because of a conviction that intentions are worthy, seeking to manifest a sincere desire to cooperate and out of respect for international law, the position of the Jamahiriya has been characterized by sagacity, as the world may testify. The Jamahiriya had thus been expecting, as it had every right to expect, that the three States and the Security Council would take equivalent steps to end a dispute that has no sound historical or cultural basis.

It was, however, most regrettably surprised when the three States issued a joint declaration on 13 August 1993 in which they claim that Libya has not discharged its obligations. In light of all of the foregoing, Libya feels duty bound, as a law-abiding State Member of the United Nations, to place on record the following points:

#### I. THE POLICY OF DOUBLE STANDARDS

1. At the present delicate juncture in which the international community finds itself, it is astonishing that the United Nations, or the activist Powers in it, should employ two different measures or adopt a mode of procedure in which the application of double standards has the upper hand. It changes the policy it pursues and the rules it applies with the party being addressed, in the sense that it deals with particular States with firm resolve and pursues a policy of indifference towards States that have committed crimes and offenses hundreds of times worse than those attributed to others.

Libya is of the view - one shared by all third-world countries - that this policy will indisputably undermine the confidence of peoples in the Organization and in the new world order and the values that it proclaims and invokes. We have no need to refer to the cases that demonstrate that a policy of double standards has been pursued in recent years.

2. The double standards embraced by the Security Council have led to a duality in the way matters are taken up and a selectivity in the way they are handled, thereby violating the rules of justice and equity on which international law is based and the provisions of the Charter of the United Nations.

3. At a time when, on an important issue, sponsorship is offered to and direct negotiations are imposed on the Palestinians and Israel, the parties concerned refuse to sit down and negotiate with the Jamahiriya. Why do these same parties refuse to adopt the method of direct negotiations to resolve all their differences with the Jamahiriya?

4. On the night of 15 April 1986, the Great Jamahiriya was subjected to unprovoked armed military aggression aimed against the life of Colonel Muammar Qaddafi, Leader of the Revolution, the members of his family and other innocent and defenceless persons and carried out by a great Power that is a permanent member of the Security Council.

Despite that aggression and its persistence in the form of an economic embargo, and despite the fact that it was in breach of international law, the Security Council did not adopt a stance condemning the use of force against an independent sovereign State and a Member of the United Nations.

5. There is eagerness for the implementation of Security Council resolutions relating to the imposition of sanctions on the Jamahiriya, but no similar eagerness for the implementation of the dozens of resolutions adopted by the same Council on the question of Palestine.

Why is there so much stress on the implementation of resolution 731 (1992), while the implementation of resolutions 425 (1978) and 799 (1992) is ignored? Israel has proceeded to implement resolution 799 (1992), requiring the immediate return of the deportees, in the manner it saw fit, and the Security Council has had no objection to make.

In relation to resolution 731 (1992), why is the Jamahiriya not treated as Israel was treated in the matter of the implementation of resolution 799 (1992)?

Does this not constitute discrimination in the way Members of the United Nations are treated? And can it not be regarded as the application of two different standards by the body that has particular responsibility for the maintenance of security?

6. Would the United States of America and the United Kingdom agree and would they give official undertakings to accede to a request from the Great Jamahiriya in the event that the Libyan judicial authorities were to seek to question and bring to trial nationals of those countries who planned and participated in the murder of innocent citizens in the armed aggression of 1986? Similarly, what possibility is there of the extradition of those who undertook the training of criminal elements who have committed murder and sabotage in the territory of the Great Jamahiriya and those responsible for the forcible abduction of Libyan nationals from Chad?

7. As a result of the sanctions imposed by the Security Council under resolution 748 (1992) and of the prohibition on the supply to Libya of replacement parts for aircraft for purposes of maintenance, an aircraft of Libyan Arab Airlines, flight number 1103, crashed on an internal flight from Benghazi to Tripoli in 1992 taking the lives of 157 innocent persons.

The Jamahiriya, on the grounds of mere suspicion of two persons whose guilt has not been established, has sustained losses of more than 3 billion dollars and has lost the lives of 630 innocent people owing to the shortage of vaccines, in travel-related mishaps and because of other difficulties.

8. The Jamahiriya is astonished at the insistence of the three States on acting in the framework of Chapter VII of the Charter of the United Nations with regard to incidents in which the proximate or remote involvement of any Libyan elements has not been established. At the same time, the provisions of Chapter VII are not applied in dealing with the State of Israel, which commits crimes and atrocities that are condemned by the entire international community and are incompatible with the most elementary norms of law and legitimacy.

## II. THE LEGAL POSITION (DOMESTIC AND INTERNATIONAL) ON THE QUESTION OF EXTRADITION

It is perhaps superfluous to recall that the requests from the States in question for the extradition of the two suspects holding the citizenship of the country from which extradition is requested meet with many legal obstacles, the most significant of which can be summarized as follows:

1. Article 1, paragraph 3, of the Charter of the United Nations states that one of the Purposes of the United Nations is "To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights". It is clear that the Organization is committed to the application of this text, and it is therefore necessary to give precedence to human rights over all other considerations. World peace can be achieved, according to the United Nations philosophy, only by respect for human beings.

In other words, justice at the domestic and international levels must not be achieved at the cost of denying human rights.

Accordingly, in its concern that legitimacy be respected, the Jamahiriya is prepared to implement Security Council resolutions whenever they are compatible with the provisions of the Charter and of international law and can be interpreted in conformity with them.

2. Security Council resolutions 731 (1992) and 748 (1992) can be legitimized and their implementation thus honoured only in light of their legitimacy vis-à-vis the provisions of international law and human rights legislation.

Under the provisions of the Charter, the Security Council is legally entrusted with a fundamental task that relates to respect for international law, not to its breach and violation.

How is it conceivable that the Jamahiriya should be obliged to extradite its nationals with all that that entails in terms of violating Article 2, paragraph 7, of the Charter, which establishes the principle of non-intervention in the domestic jurisdiction of Member States?

3. The two resolutions, as a whole and in their various parts, run into a number of problematical legal issues raised by the matter of Libyan State sovereignty. The most significant of them are:

(a) The impermissibility of the extradition of a person holding citizenship of the State (Libyan Penal and Criminal Procedure Code);

(b) The absence of an agreement between the parties concerned governing rules of extradition;

(c) The accession of the Jamahiriya to all of the international human rights covenants prevents it from taking measures that may void human rights guarantees to a just and fair trial.

4. How can there be extradition in the absence of an extradition agreement between the parties concerned and while there is an international agreement in force that is binding on all the parties (the 1971 Montreal Convention) and makes extradition subject to the legislation of the State requested without according any priority or pre-eminence to the jurisdiction to the aircraft's flag country (the United States of America) or the country in which the act took place (Scotland)? All of this goes to support the Libyan proposal that a trial in a third country should be accepted.

5. How is it possible to accede to a request for the extradition of the two suspects on the mere basis of preliminary and undisclosed inquiries carried out by one State or by two States without the State from which extradition is requested verifying the existence of sufficient evidence for the charge?

The intense media campaigns, the atmosphere of hostility surrounding the two suspects, the attacks on the Arabs in general and Libya in particular and official declarations and statements asserting that the two suspects were responsible, all are factors that dissipate any hope of a just and fair trial. They consequently prevent the Security Council resolutions from being interpreted to mean that the Great Jamahiriya has an obligation to extradite. To accept in principle the extradition of the two suspects might void a basic legal guarantee in the field of human rights to a just and fair trial.

It can be expected that a trial that may take place in another State that is an adversary of that of the two suspects will not provide the minimum guarantees, even if it is maintained otherwise, since the relations of the parties to the dispute are marked by certain manifestations of tension, hostility and an accumulated series of media campaigns.

These factors, constituting the environment in which the trial would take place, have created an unsuitable climate for justice to be served and circumstances that cannot be characterized as congenial to ensuring a just and fair trial.

If we add to this the legal character of the jury system, there is a clear danger in adopting the principle of extradition of voiding the guarantee of a just and fair verdict.

6. The Security Council and the International Court of Justice are counterbalanced and complementary organs of the United Nations. In light of Article 36, paragraph 3, of the Charter of the United Nations, the jurisdiction of the International Court of Justice may be invaded, and it is not conceivable or possible that the resolutions of the Security Council should be interpreted as imposing the obligation to extradite and thus obstruct or prevent the Court from performing its role in the settlement of the dispute.

7. The Jamahiriya is not prepared to accept any infringement of its sovereignty, independence and freedom of decision. It further refuses to be drawn into any action that gives rise to the creation of a dangerous precedent that may have adverse repercussions on international relations as a whole.

Libya shall not yield to pressure and shall not be intimidated by threats of sanctions or of the strengthening of sanctions. No price can be set on the



freedom of peoples, and we are prepared to bear all the consequences of safeguarding the dignity of our nation and its people as long as we believe that we are acting within the bounds of law and legitimacy.

8. The Jamahiriya cannot accept offense to the dignity of the Libyan people or any of its members, because it is of the view that its basic mission is to protect that dignity and impose respect for it.

On the basis of the foregoing, the Jamahiriya refuses to compel two of its nationals to extradite themselves to a foreign country that adopts a hostile and adversarial stance towards their own and renders a prior verdict on their guilt before it is established at a judicial trial providing adequate guarantees and sheltered from political or cultural chauvinism.

9. In view of the fact that there is no agreement in force between the Jamahiriya and the United States or the United Kingdom for the extradition of offenders, Libya is unable to compel the two suspects to extradite themselves to either country. It remains for them to decide by their own free will whether they will present themselves to the legal jurisdiction of either of the two countries.

### III. SUPPOSITION THAT THE TWO SUSPECTS WILL CHALLENGE THE CHARGES AGAINST THEM AND AGREE TO APPEAR BEFORE A FOREIGN JURISDICTION

1. It may be possible for the two suspects to take the initiative of proceeding to a foreign country, without specification or exclusion, and appear before the judicial authorities to challenge the unjust charge against them and secure their acquittal in a just and fair trial unaffected by political influences and media campaigns that would prejudice the fairness of the trial and place it outside the domain of law and legal guarantees. It may be appropriate for us to notify you that the two suspects have informed us that they have recently appointed a team of attorneys in Scotland and England. They have requested this team, together with the attorneys who represented them in the United States in the past, to take the necessary measures to challenge the legal competence of either country to provide them with a fair trial.

The two suspects base this move on the obvious fact that there has been widespread advance media condemnation, which would make it impossible to select an impartial and uninfluenced jury in either country.

It goes without saying that in the event this move succeeds it will automatically imply the removal of any basis for strengthening the sanctions imposed on the Jamahiriya. Strengthening the sanctions would necessarily bring about the prejudgement of matters pending before the judicial authorities in the two countries, and this would further prejudice the position of the two suspects, who have already sustained much harm, and violate their human rights.

Through their representatives, the two suspects have raised a number of questions, and we submit them hereunder on their behalf in the hope that the answers provided to them will have a role in their adoption of a positive decision.

Assuming that their appearance before a foreign jurisdiction is possible and that it will take place and be on their own responsibility and not that of the Libyan State, what are the answers to the questions set forth hereunder, which may be provided by the two States concerned and the Security Council directly to the Jamahiriya or through the Secretary-General of the United Nations?

Are the answers to the questions posed to be considered as legal and political guarantees provided to the two suspects and their defence team?

1. Does the State concerned to which the two suspects would proceed in order to appear before a just and fair tribunal undertake to conduct the trial in a legal framework removed from the influence of political factors?
2. Does this State undertake not to conduct an inquiry with the two accused outside the purview of the court so that the two suspects are not subjected to questioning by other agencies such as domestic or foreign intelligence police?
3. Does the State undertake not to exert any physical or mental pressures on the two suspects while they are in detention during the trial?
4. Will the two suspects be guaranteed that no question will be addressed to them and no measures taken other than in the presence of the defence team appointed by them?
5. Does the State concerned undertake to allow representatives of the defence team, the Secretariat of the United Nations, the secretariat of the League of Arab States and the secretariat of the Arab Lawyers' Union to visit the suspects at their place of detention during the trial in order to ascertain that they have not been subjected to torture, pressure or coercion?
6. Does the State undertake not to offer any inducements or specific deals to the two suspects that may tend to alter the truth, or to render a reduced sentence or consider them State's witnesses if they should make certain admissions?
7. Does the State undertake that no individual apart from its own judicial officials will participate in the reception of the two suspects and that, in any event, this will take place only in the presence of representatives of the defence team?
8. How will the defence team for the two suspects ascertain the suitability of the persons proposed as prospective members of the jury that may decide the facts without prejudgement and uninfluenced by the images imprinted on their minds?
9. Does the State undertake that the trial will be in public and that the two suspects shall have the right to defend themselves, directly or through the defence team, in all stages of consideration of the case?

10. What would happen should the jury be unable to reach a verdict of guilty or not guilty?
11. Does the State undertake that the trial will be restricted to the incidents connected with Pan American flight 103 and will not go beyond them to include other incidents or other charges?
12. Does the State undertake to allow the two suspects to leave its territory and return to their homes on the same day a verdict of innocent is rendered or on completion of execution of the penalty against them should their guilt be proved? In this event, and in the event of a judgement for compensation that they are unable to pay, there shall be no liability for the Jamahiriya, which will not have been on trial, and thus its assets may not be placed at risk.
13. Does the State concerned undertake not to extradite the two suspects to another State under any pretext and for whatever reason?
14. Does the State undertake to ensure the two suspects the right to request a retrial, if the law applied therein permits retrial, or to appeal against the verdict?
15. Supposing that the prosecuting authorities wished to prefer charges against other persons in the same case or to prefer charges against the same two suspects in respect of other incidents, would the United States of America and the United Kingdom undertake to accept that consideration of such fresh charges should take place outside the framework of Security Council resolutions 731 (1992) and 748 (1992)?
16. In the absence of a bilateral agreement between the parties that regulates relationships between different legal systems, how can procedures be established to enable the two to appear before a foreign jurisdiction?
17. What legal, social and cultural guarantees are there to ensure just and fair investigation procedures and trial, for example guarantees relating to the non-subjection of the two to police procedures, respect for their cultural and religious identity, regard for health conditions and the facilitation of daily communication with their families?
18. What is the role of the Secretary-General of the United Nations and of the United Nations itself in determining the procedures for the appearance of the two suspects before a foreign jurisdiction and the aforementioned guarantees relating to the investigation and trial?
19. The international covenants relating to human rights legislation have without exception set forth the judicial obligations that States assume in order to ensure respect for the rights they embody, and they have done so by stipulating them explicitly. Most of them refer to the obligation of all States:

"To ensure that any person shall have an effective legal or administrative remedy in the event of any violation of the rights and freedoms established in the covenants, notwithstanding that the violation has been committed by persons acting in an official capacity."

The right of litigation is one of the most important mechanisms for ensuring human rights. It is, indeed, the most important of all, since rights have no meaning without the possibility of litigation to compel respect for them.

At all events, the matter requires that negotiations be conducted under the auspices of the Security Council, represented in the person of the Secretary-General or his representative, at United Nations Headquarters in New York or at Geneva, in order to draw up the necessary terms and guarantees for the inquiry and trial procedures. There should also be negotiations among the prosecuting and trial authorities, in any country satisfactory to the two accused, in the presence of their legal representative and under the supervision of the Secretary-General of the United Nations, to establish the terms necessary for their voluntary appearance.

#### IV. CLARIFICATIONS AND GUARANTEES REQUESTED BY THE JAMAHIRIYA

As a member of the international community and a State that respects international law and the obligations stemming from the Charter, the Jamahiriya deems itself obliged to pose a set of questions that revolve around the legal and political guarantees that the two States or the Security Council, directly or through the Secretary-General of the United Nations, may undertake to provide.

The guarantees and clarifications that the Great Jamahiriya is requesting are such as to assist in facilitating the task of applying national and international law and to bring the question in dispute to a definitive end.

With respect to these questions, we should like to address the following points:

1. Do the two States concerned undertake to request the Security Council to lift the sanctions imposed on Libya under resolution 748 (1992) immediately on arrival of the two suspects in the jurisdiction of the court that will consider the case, without awaiting the completion of the trial proceedings or the rendering of a verdict?
2. Do the two States undertake not to claim that Libya has not discharged its obligations, particularly with respect to those entailed by resolution 748 (1992) and particularly in the field of terrorism in accordance with the text of paragraph 2 of that resolution?
3. Should either of the two States have reservations in this regard, what precisely in their view is required of the Jamahiriya for it to demonstrate that it has discharged this obligation in full?

4. Do the two States undertake to enter into dialogue with the Jamahiriya on the normalization of relations and the elimination of the remaining factors that cloud them immediately on arrival of the two suspects in the jurisdiction of the court at which the trial will take place?

5. Do the two States agree to cooperate with the Jamahiriya immediately on commencement of the trial in adopting the necessary measures with the Libyan or foreign elements concerning which the Jamahiriya has evidence of their involvement in sabotage or terrorist activities that jeopardize the interests of the Libyan State or of its nationals?

6. Do the two States agree that, after the appearance of the two suspects before the court, the role of the Security Council shall be restricted to the lifting of sanctions and shall not extend to monitoring the progress of the trial proceedings or any other aspects?

7. It is clear from a reading of Security Council resolution 731 (1992) that it accuses the Great Jamahiriya, in a general and vague manner, of acts of terrorism and assistance to terrorism.

Assistance by the Great Jamahiriya to certain liberation organizations was provided on the basis of our belief in freedom and the right of peoples to self-determination. This is in conformity with the resolutions adopted by the United Nations General Assembly at successive sessions on the need to support liberation movements and to promote the right of peoples to self-determination.

In the absence of an international agreement defining the concept and bounds of terrorism, certain actions may be interpreted and cooperation with certain liberation movements may be characterized as terrorism by some parties without there being any basis in international law for doing so.

In this connection, the Great Jamahiriya has declared on a number of occasions and in numerous communications that it has implemented resolution 731 (1992) as it relates to the charge against it having supported and assisted groups suspected of engaging in terrorist activities. The letters and statements of the Great Jamahiriya on this matter have documented this fact to the United Nations.

As an additional manifestation of good faith on the part of the Great Jamahiriya, in its appreciation of the role of the Security Council, and in its desire to cooperate with the United Nations and its Secretary-General in promoting the norms of international cooperation and world peace, the Great Jamahiriya requested that a United Nations mission be dispatched to verify its implementation of resolution 731 (1992) as it relates to terrorism, but this request was not granted. Do the two States concerned undertake not to characterize the Jamahiriya as a State that supports groups whose activities are said to constitute terrorism?

8. In their declaration of 13 August 1993, the three States reiterate that they have no hidden agenda against the Jamahiriya, meaning that they have no intention of intervening in the internal affairs or interfering with the political and economic choices of the Libyan Arab people, and that, on the

contrary, upon implementation by the Great Jamahiriya of resolution 731 (1992) the conditions would be met for the lifting of the sanctions imposed.

To what extent are the three States prepared to affirm that this is a commitment they will fulfil within the Security Council on discussion of the lifting of the measures of compulsion against the Great Jamahiriya?

9. The Jamahiriya understands from the declaration of the three States issued on 13 August 1993 that it contains a modification of the demands set forth in the declaration of 27 November 1991 contained in document S/23308. Will the appearance of the two suspects on their own initiative be regarded as compliance with the requests of these States and lead to the immediate lifting of the compulsory sanctions imposed?

The Jamahiriya hopes to receive your reply to these questions as quickly as possible so that it may communicate it to the legal representatives of the two suspects before they make their decision on the matter and so that the Jamahiriya may determine its future steps at the proper time and without delay.

In conclusion, we request you to have this letter circulated as a document of the Security Council.

We must convey to you our sincere gratitude and appreciation for your active role in safeguarding international legitimacy, promoting the principles of justice and law and protecting international peace and security.

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Exhibit 30  
United States cable dated 22 September 1993 from Washington, D.C.  
to United States Mission to the United Nations, New York

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DEPARTMENT OF STATE

IS/FPC/CDR

Date 5/30/95

RELEASE       DECLASSIFY  
 EXCISE       DECLASSIFY  
 DENY      IN PART  
 DELETE Non-Responsive Info  
FOIA Exemptions State Secs  
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EXDIS REVIEW

- Cat. A - Caption removed; transferred to RAS/FPC
- Cat. B - Transferred to RAS/FPC with additional access controlled by S/S
- Cat. C - Caption and custody retained by S/S

Elijah Kelly, Jr.  
5/30/95

SUBJECT: PAN AM 103: USG ANSWERS TO LIBYAN QUESTIONS

1. \_\_\_\_\_ - ENTIRE TEXT.
2. USUN IS INSTRUCTED TO SHARE THE FOLLOWING ANSWERS TO LIBYA'S LEGAL QUESTIONS WITH UKUN, THE FRENCH MISSION AND UN LEGAL ADVISER FLEISCHHAUER.

2A. THE RESPONSES TO YOUR QUESTIONS AS SET OUT BELOW, REFLECT THE LAWS OF THE UNITED STATES GOVERNING ALL CRIMINAL PROCEEDINGS. AS SUCH, ANY TRIAL OF THE DEFENDANTS IN THE UNITED STATES WILL BE CONDUCTED IN ACCORDANCE WITH THEM. NO ASSURANCES BEYOND THAT ARE TO BE INFERRED FROM ANY OF THE ANSWERS SET FORTH BELOW.  
2B. A TRIAL ON THE INDICTMENT IN THE U.S. WILL BE CONDUCTED IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT COURT FOR THE DISTRICT OF COLUMBIA. THE TRIAL JUDGE, LIKE ALL U.S. DISTRICT COURT JUDGES AND AS PROVIDED FOR IN THE US CONSTITUTION, IS COMPLETELY INDEPENDENT FROM THE POLITICAL BRANCHES OF THE



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GOVERNMENT AND IS NOT SUBJECT TO ANY FORM OF POLITICAL  
INFLUENCE. PURSUANT TO THE US CONSTITUTION, IN ALL  
CRIMINAL PROCEEDINGS, ALL ACCUSED PERSONS HAVE THE RIGHT

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TO A SPEEDY TRIAL BY AN IMPARTIAL AND PUBLIC JURY; TO BE  
CONFRONTED WITH WITNESSES AGAINST THEM; TO HAVE  
COMPULSORY PROCESS FOR OBTAINING WITNESSES IN THEIR  
FAVOR; AND TO HAVE THE ASSISTANCE OF COUNSEL FOR THEIR  
DEFENSE.

3. THE DEFENDANTS HAVE THE ABSOLUTE RIGHT TO CHOOSE NOT  
TO MEET OR COMMUNICATE WITH ANYONE FROM THE GOVERNMENT  
BEFORE TRIAL INCLUDING ANYONE FROM THE PROSECUTION, THE  
POLICE, OR US OR FOREIGN INTELLIGENCE AGENTS. ANY  
INTERVIEW OF THE DEFENDANTS BY REPRESENTATIVES OF THE  
GOVERNMENT WOULD ONLY BE CONDUCTED WITH DEFENDANTS'  
FREELY GIVEN CONSENT. THE DEFENDANTS' ATTORNEYS HAVE  
THE RIGHT TO BE PRESENT DURING SUCH QUESTIONING SHOULD  
THE DEFENDANTS REQUEST THEIR PRESENCE.
4. THE GOVERNMENT RESERVES THE RIGHT TO EXPLORE WITH THE  
DEFENDANTS, IN ACCORD WITH ESTABLISHED CRIMINAL JUSTICE  
PROCEDURES, THE POSSIBILITY OF FURNISHING INFORMATION  
CONCERNING THE BOMBING IN EXCHANGE FOR LIMITING THE  
DURATION OF IMPRISONMENT. IT WOULD NOT, HOWEVER, EXERT  
ANY FORM OF COERCION UPON THE DEFENDANTS IN ORDER TO  
INDUCE SUCH COOPERATION OR TO INDUCE A CONFESSION.
5. AS EXPLAINED ABOVE, UNLESS THE DEFENDANTS  
SPECIFICALLY ASSENT TO IT, THEY CANNOT BE QUESTIONED BY  
AGENTS OF THE UNITED STATES IN THE ABSENCE OF COUNSEL.  
LIKEWISE, IT IS IMPERMISSIBLE UNDER UNITED STATES LAW  
FOR THE POLICE TO CONDUCT A LINEUP FOR THE PURPOSES OF  
IDENTIFICATION WITHOUT THE PRESENCE OF COUNSEL.

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6. THE DEFENDANTS' ATTORNEYS WILL HAVE FREE ACCESS TO  
THEM FOR THE PURPOSE OF PREPARING A DEFENSE. OTHER  
PEOPLE MAY HAVE ACCESS TO THE ACCUSED IN ACCORD WITH  
ESTABLISHED POLICY ON VISITATION SET BY THE INSTITUTION  
WHERE THEY WILL BE HOUSED.
  7. AS EXPLAINED, PURSUANT TO ESTABLISHED CRIMINAL  
JUSTICE PROCEDURES, THE DEFENDANTS WILL HAVE A RIGHT  
THROUGH THEIR ATTORNEYS, TO REACH AN AGREEMENT WITH THE  
PROSECUTION WHICH COULD BENEFIT THEM. SUCH BENEFITS  
COULD BE CONTINGENT UPON PROVIDING TRUTHFUL INFORMATION  
CONCERNING THE BOMBING INVESTIGATION TO THE GOVERNMENT.
  8. UNDER US LAW, DEFENSE COUNSEL MAY BE PRESENT WHEN THE  
DEFENDANTS ARE TAKEN INTO UNITED STATES CUSTODY. THE  
DEFENDANTS WOULD THEN BE PROCESSED BY THE U.S. MARSHALS  
OR THE FBI AND TAKEN, PURSUANT TO RULE 5, FEDERAL RULES

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OF CRIMINAL PROCEDURE, "WITHOUT UNNECESSARY DELAY BEFORE THE NEAREST AVAILABLE FEDERAL MAGISTRATE."

9. PURSUANT TO US LAW, DEFENSE COUNSEL WILL BE ABLE TO PROVIDE QUESTIONS TO THE TRIAL JUDGE WHO MUST QUESTION EACH PROSPECTIVE JUROR FOR THE PURPOSE OF ENSURING THAT HE OR SHE IS IMPARTIAL. DEFENSE COUNSEL MAY THEN SEEK TO ELIMINATE FROM THE JURY POTENTIAL JURORS WHO, FROM THEIR RESPONSES TO THE QUESTIONS ASKED BY THE JUDGE, APPEAR TO LACK THE NECESSARY IMPARTIALITY.

10. UNDER THE UNITED STATES CONSTITUTION, ALL DEFENDANTS HAVE THE RIGHT TO BE REPRESENTED BY COUNSEL DURING ALL

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PRE-TRIAL AND TRIAL PROCEEDINGS. THEY WILL ALSO HAVE THE RIGHT TO A PUBLIC TRIAL, TO CONFRONT AND CROSS-EXAMINE WITNESSES AND TO PRESENT A DEFENSE. IN PRESENTING THAT DEFENSE, THEY HAVE THE RIGHT TO REQUIRE THE PRESENCE OF WITNESSES WHO HAVE RELEVANT EVIDENCE.

11. IN THE EVENT THAT THE JURY IS DEADLOCKED, THE TRIAL JUDGE CAN DECLARE A MISTRIAL AND THE DEFENDANTS CAN BE RETRIED.

12. AT TRIAL OF THIS CASE, THE PROSECUTION CAN ONLY PRESENT EVIDENCE THAT IS RELEVANT TO THE CHARGES IN THE INDICTMENT. THE SUSPECTS CURRENTLY ARE ONLY CHARGED FOR THEIR INVOLVEMENT IN THE PAN AM 103 BOMBING. NO US LAW WOULD PROHIBIT THEIR BEING CHARGED WITH OTHER CRIMES WITHIN US JURISDICTION SHOULD SUFFICIENT EVIDENCE WARRANT IT, NOR WOULD THE SUSPECTS BE IMMUNE FROM PROSECUTION FOR CRIMES THEY MIGHT COMMIT AFTR COMING TO THE US.

13. IN THE EVENT THE DEFENDANTS ARE FOUND "NOT GUILTY" BY A JURY, THEY WILL BE RELEASED FROM UNITED STATES CUSTODY WITHOUT UNDUDE DELAY. IN THE EVENT OF A FINDING OF "NOT GUILTY", A FEDERAL CRIMINAL COURT CANNOT IMPOSE A JUDGMENT OF MONETARY COMPENSATION UPON THE DEFENDANTS NOR CAN IT IMPOSE SUCH A JUDGMENT AGAINST A FOREIGN GOVERNMENT. ((THIS DOES NOT AFFECT THE REQUIREMENT ON LIBYA UNDER SCR 731 TO PAY APPROPRIATE COMPENSATION IF THE ACCUSED WERE FOUND GUILTY OR IF LIBYAN INVOLVEMENT WERE DEMONSTRATED IN SOME WAY.))

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14. NO. NO TRANSFER OF THE DEFENDANTS, HOWEVER, WOULD BE MADE TO ANY OTHER COUNTRY EXCEPT IN STRICT CONFORMITY WITH THE LAWS OF THE UNITED STATES.

15. IN THE EVENT THE DEFENDANTS ARE CONVICTED, THEY HAVE AN AUTOMATIC RIGHT TO PURSUE AN APPEAL. IF, ON APPEAL, THE COURT DETERMINES THAT THE TRIAL WAS DEFECTIVE DUE TO A LEGAL ERROR, THE DEFENDANTS CAN BE RETRIED IN A

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PROCEEDING FREE OF THE DEFECT IDENTIFIED BY THE APPELLATE COURT.

16. THE US HAS ALREADY AFFIRMED ITS WILLINGNESS TO SUSPEND THE PROVISIONS OF RESOLUTION 748 UPON SURRENDER OF THE TWO SUSPECTS. IF THE OTHER REQUIREMENTS OF 731 AND 748 WERE FULFILLED, THE SANCTIONS WOULD BE LIFTED ENTIRELY; IF THEY WERE NOT, THE SUSPENSION WOULD BE TERMINATED. WE NOTE THAT ONE OF THESE REQUIREMENTS, INCORPORATED BY REFERENCE INTO RESOLUTION 731, OBLIGATES LIBYA TO ALLOW FULL ACCESS TO ALL WITNESSES, DOCUMENTS AND OTHER MATERIAL EVIDENCE RELATING TO "THIS CRIME." IF EVIDENCE OF LIBYAN INVOLVEMENT IN OTHER ACTS OF TERRORISM RESULTED FROM THIS TRIAL, THE SECURITY COUNCIL WOULD HAVE THE OPTION OF DEALING WITH THE NEW SITUATION.

17. THE PROCEDURES GOVERNING THE DEFENDANTS' APPEARANCE AND TRIAL WILL BE THOSE BY WHICH ALL TRIALS IN COURTS OF THE UNITED STATES ARE CONDUCTED. THESE PROCEDURES DO NOT DEPEND UPON NOR ARE THEY SUBJECT TO VARIATION ON THE BASIS OF THE DEFENDANTS' NATIONALITY.

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18. THE CONSTITUTION AND LAWS OF THE UNITED STATES GUARANTEE THAT THE DEFENDANTS WILL BE TREATED FAIRLY AND HUMANELY BY THE COURTS, LAW ENFORCEMENT OFFICERS, AND THOSE RESPONSIBLE FOR THE DEFENDANTS' DETENTION WHILE AWAITING TRIAL.

19. AS EXPLAINED ABOVE, THE LAWS OF THE UNITED STATES ARE THE EXCLUSIVE BASIS GOVERNING THE PROCEDURES FOR THE DEFENDANTS' TRIAL AND ANY INVESTIGATION.

20. AS EXPLAINED, THE CONSTITUTION AND LAWS OF THE UNITED STATES GOVERN THE DEFENDANTS' TRIAL RIGHTS IN ANY CRIMINAL PROCEEDING CONDUCTED IN THE COURTS OF THE UNITED STATES REGARDLESS OF THE DEFENDANT'S NATIONALITY. ((THESE PROVIDE GUARANTEES OF DEFENDANTS' RIGHTS WHICH EXCEED THOSE PROVIDED BY INTERNATIONAL HUMAN RIGHTS AGREEMENTS)).

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Exhibit 31

Letter dated 1 October 1993 from the Permanent Representative of  
the Libyan Arab Jamahiriya to the United Nations  
addressed to the Secretary-General  
(United Nations Document S/26523; 1 October 1993)



Security Council

Distr.  
GENERAL

S/26523  
1 October 1993  
ENGLISH  
ORIGINAL: ARABIC

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LETTER DATED 1 OCTOBER 1993 FROM THE PERMANENT REPRESENTATIVE  
OF THE LIBYAN ARAB JAMAHIRIYA TO THE UNITED NATIONS ADDRESSED  
TO THE SECRETARY-GENERAL

With reference to the two letters from the Secretary of the General People's Committee for Foreign Liaison and International Cooperation which were sent to you on 29 September and 1 October 1993 respectively, I should be grateful if you would have them circulated as a document of the Security Council.

(Signed) Ali Ahmed ELHOUDERI  
Permanent Representative

ANNEX I

Letter dated 29 September 1993 from the Secretary  
of the General People's Committee for Foreign  
Liaison and International Cooperation of the  
Libyan Arab Jamahiriya

I received your letter dated 24 September 1993 which contains replies to certain questions which were raised in the letter which we sent to you on 11 September 1993. I should like to express my appreciation to you for the speed and objectivity of your reply and for your recognition of our willingness to cooperate with you and to take positive and meaningful measures.

I should like to assure you once again of our determination to settle all pending issues with the countries concerned in order to improve our relations with all the countries of the world within a framework of dialogue, understanding and cooperation on the basis of the purposes and principles of the Charter of the United Nations.

The replies contained in your letter concern the questions raised and the clarification requested by the lawyers of the two suspects but we are still awaiting the replies to the questions asked and clarification sought from the three Western countries.

We have sent to the lawyers of the two suspects the replies which you sent to us. For our part, we wish to say that the assurances you have given us are adequate and acceptable. As a State, and after these assurances, not only are we no longer opposed to the suspects going to trial, but we will encourage them to do so. We believe that there is only one more step which needs to be taken to resolve this crisis which has lasted for years, namely to convince the suspects, their families and their lawyers to go to trial. For our part, as we have already said, we will encourage them to do so.

As to the disaster of the UTA 772 aircraft, we assure you of our full willingness to cooperate with the competent French authorities, in accordance with the French demands in relation to the investigation of this incident.

(Signed) Omar Mustafa ALMUNTASSER  
Secretary of the General People's  
Committee for Foreign Liaison and  
International Cooperation

ANNEX II

Letter dated 1 October 1993 from the Secretary  
of the General People's Committee for Foreign  
Liaison and International Cooperation of the  
Libyan Arab Jamahiriya addressed to the  
Secretary-General

With reference to the letter I addressed to you on 29 September 1993, I should like to confirm that the replies you gave to the questions raised by the two suspects are adequate and acceptable, and that the Libyan Arab Jamahiriya is encouraging the two suspects to appear before the Scottish courts.

As a token of our good will we are prepared to welcome a group of representatives from the Scottish courts to see the efforts we are making, to meet the two suspects, their families and lawyers and to contribute to the efforts designed to convince them to appear before the Scottish courts.

Furthermore, I wish to assure you that we will respond to the French requests with the same earnestness and determination we have shown with respect to the American and British requests.

I sincerely hope that the three countries will give some acknowledgement of our earnestness and our firm determination to implement Security Council resolution 731 (1992). I also hope that the countries concerned will help to create a favourable climate, devoid of any threat, ultimatum or escalation of the aggravation of sanctions, and that this will come about prior to the date scheduled for consideration of the action taken on resolution 748. In acting thus, these countries will be helping to bring us to the final stage of the long road we have travelled. There is no need to recall that we received answers to some of our questions on 28 September 1993 and that answers to the other questions would help to create this favourable climate.

(Signed) Omar Mustafa ALMUNTASSER  
Secretary of the General People's  
Committee for Foreign Liaison and  
International Cooperation

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Exhibit 32

Resolution 883, United Nations Security Council,  
3312th meeting, 11 November 1993  
(United Nations Document S/RES/883)



Security Council

Distr.  
GENERAL

S/RES/883 (1993)  
11 November 1993

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RESOLUTION 883 (1993)

Adopted by the Security Council at its 3312th meeting,  
on 11 November 1993

The Security Council,

Reaffirming its resolutions 731 (1992) of 21 January 1992 and 748 (1992) of 31 March 1992,

Deeply concerned that after more than twenty months the Libyan Government has not fully complied with these resolutions,

Determined to eliminate international terrorism,

Convinced that those responsible for acts of international terrorism must be brought to justice,

Convinced also that the suppression of acts of international terrorism, including those in which States are directly or indirectly involved, is essential for the maintenance of international peace and security,

Determining, in this context, that the continued failure by the Libyan Government to demonstrate by concrete actions its renunciation of terrorism, and in particular its continued failure to respond fully and effectively to the requests and decisions in resolutions 731 (1992) and 748 (1992), constitute a threat to international peace and security,

Taking note of the letters to the Secretary-General dated 29 September and 1 October 1993 from the Secretary of the General People's Committee for Foreign Liaison and International Cooperation of Libya (S/26523) and his speech in the General Debate at the forty-eighth session of the General Assembly (A/48/PV.20) in which Libya stated its intention to encourage those charged with the bombing of Pan Am 103 to appear for trial in Scotland and its willingness to cooperate with the competent French authorities in the case of the bombing of UTA 772,

Expressing its gratitude to the Secretary-General for the efforts he has made pursuant to paragraph 4 of resolution 731 (1992),

Recalling the right of States, under Article 50 of the Charter, to consult the Security Council where they find themselves confronted with special economic problems arising from the carrying out of preventive or enforcement measures,

Acting under Chapter VII of the Charter,

1. Demands once again that the Libyan Government comply without any further delay with resolutions 731 (1992) and 748 (1992);

2. Decides, in order to secure compliance by the Libyan Government with the decisions of the Council, to take the following measures, which shall come into force at 00.01 EST on 1 December 1993 unless the Secretary-General has reported to the Council in the terms set out in paragraph 16 below;

3. Decides that all States in which there are funds or other financial resources (including funds derived or generated from property) owned or controlled, directly or indirectly, by:

(a) the Government or public authorities of Libya, or

(b) any Libyan undertaking,

shall freeze such funds and financial resources and ensure that neither they nor any other funds and financial resources are made available, by their nationals or by any persons within their territory, directly or indirectly, to or for the benefit of the Government or public authorities of Libya or any Libyan undertaking, which for the purposes of this paragraph, means any commercial, industrial or public utility undertaking which is owned or controlled, directly or indirectly, by

(i) the Government or public authorities of Libya,

(ii) any entity, wherever located or organized, owned or controlled by (i), or

(iii) any person identified by States as acting on behalf of (i) or (ii) for the purposes of this resolution;

4. Further decides that the measures imposed by paragraph 3 above do not apply to funds or other financial resources derived from the sale or supply of any petroleum or petroleum products, including natural gas and natural gas products, or agricultural products or commodities, originating in Libya and exported therefrom after the time specified in paragraph 2 above, provided that any such funds are paid into separate bank accounts exclusively for these funds;

5. Decides that all States shall prohibit any provision to Libya by their nationals or from their territory of the items listed in the annex to this resolution, as well as the provision of any types of equipment, supplies and grants of licensing arrangements for the manufacture or maintenance of such items;

6. Further decides that, in order to make fully effective the provisions of resolution 748 (1992), all States shall:

(a) require the immediate and complete closure of all Libyan Arab Airlines offices within their territories;

(b) prohibit any commercial transactions with Libyan Arab Airlines by their nationals or from their territory, including the honouring or endorsement of any tickets or other documents issued by that airline;

(c) prohibit, by their nationals or from their territory, the entering into or renewal of arrangements for:

(i) the making available, for operation within Libya, of any aircraft or aircraft components, or

(ii) the provision of engineering or maintenance servicing of any aircraft or aircraft components within Libya;

(d) prohibit, by their nationals or from their territory, the supply of any materials destined for the construction, improvement or maintenance of Libyan civilian or military airfields and associated facilities and equipment, or of any engineering or other services or components destined for the maintenance of any Libyan civil or military airfields or associated facilities and equipment, except emergency equipment and equipment and services directly related to civilian air traffic control;

(e) prohibit, by their nationals or from their territory, any provision of advice, assistance, or training to Libyan pilots, flight engineers, or aircraft and ground maintenance personnel associated with the operation of aircraft and airfields within Libya;

(f) prohibit, by their nationals or from their territory, any renewal of any direct insurance for Libyan aircraft;

7. Confirms that the decision taken in resolution 748 (1992) that all States shall significantly reduce the level of the staff at Libyan diplomatic missions and consular posts includes all missions and posts established since that decision or after the coming into force of this resolution;

8. Decides that all States, and the Government of Libya, shall take the necessary measures to ensure that no claim shall lie at the instance of the Government or public authorities of Libya, or of any Libyan national, or of any Libyan undertaking as defined in paragraph 3 of this resolution, or of any person claiming through or for the benefit of any such person or undertaking, in connection with any contract or other transaction or commercial operation where its performance was affected by reason of the measures imposed by or pursuant to this resolution or related resolutions;

9. Instructs the Committee established by resolution 748 (1992) to draw up expeditiously guidelines for the implementation of paragraphs 3 to 7 of this resolution, and to amend and supplement, as appropriate, the guidelines for the implementation of resolution 748 (1992), especially its paragraph 5 (a);

10. Entrusts the Committee established by resolution 748 (1992) with the task of examining possible requests for assistance under the provisions of Article 50 of the Charter of the United Nations and making recommendations to the President of the Security Council for appropriate action;

11. Affirms that nothing in this resolution affects Libya's duty scrupulously to adhere to all of its obligations concerning servicing and repayment of its foreign debt;

12. Calls upon all States, including States not Members of the United Nations, and all international organizations, to act strictly in accordance with the provisions of the present resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to the effective time of this resolution;

13. Requests all States to report to the Secretary-General by 15 January 1994 on the measures they have instituted for meeting the obligations set out in paragraphs 3 to 7 above;

14. Invites the Secretary-General to continue his role as set out in paragraph 4 of resolution 731 (1992);

15. Calls again upon all Member States individually and collectively to encourage the Libyan Government to respond fully and effectively to the requests and decisions in resolutions 731 (1992) and 748 (1992);

16. Expresses its readiness to review the measures set forth above and in resolution 748 (1992) with a view to suspending them immediately if the Secretary-General reports to the Council that the Libyan Government has ensured the appearance of those charged with the bombing of Pan Am 103 for trial before the appropriate United Kingdom or United States court and has satisfied the French judicial authorities with respect to the bombing of UTA 772, and with a view to lifting them immediately when Libya complies fully with the requests and decisions in resolutions 731 (1992) and 748 (1992); and requests the Secretary-General, within 90 days of such suspension, to report to the Council on Libya's compliance with the remaining provisions of its resolutions 731 (1992) and 748 (1992) and, in the case of non-compliance, expresses its resolve to terminate immediately the suspension of these measures;

17. Decides to remain seized of the matter.

Annex

The following are the items referred to in paragraph 5 of this resolution:

- I. Pumps of medium or large capacity whose capacity is equal to or larger than 350 cubic metres per hour and drivers (gas turbines and electric motors) designed for use in the transportation of crude oil and natural gas
- II. Equipment designed for use in crude oil export terminals:
  - Loading buoys or single point moorings (spm)
  - Flexible hoses for connection between underwater manifolds (plem) and single point mooring and floating loading hoses of large sizes (from 12" to 16")
  - Anchor chains
- III. Equipment not specially designed for use in crude oil export terminals but which because of their large capacity can be used for this purpose:
  - Loading pumps of large capacity (4,000 m<sup>3</sup>/h) and small head (10 bars)
  - Boosting pumps within the same range of flow rates
  - Inline pipe line inspection tools and cleaning devices (i.e. pigging tools) (16" and above)
  - Metering equipment of large capacity (1,000 m<sup>3</sup>/h and above)
- IV. Refinery equipment:
  - Boilers meeting American Society of Mechanical Engineers 1 standards
  - Furnaces meeting American Society of Mechanical Engineers 8 standards
  - Fractionation columns meeting American Society of Mechanical Engineers 8 standards
  - Pumps meeting American Petroleum Institute 610 standards
  - Catalytic reactors meeting American Society of Mechanical Engineers 8 standards
  - Prepared catalysts, including the following:
    - Catalysts containing platinum
    - Catalysts containing molybdenum
- V. Spare parts destined for the items in I to IV above.

Exhibit 33

Provisional Verbatim Record of the Three Thousand Three Hundred  
and Twelfth Meeting of the Security Council  
(United Nations Document S/PV.3312; 11 November 1993)



Security Council

PROVISIONAL

S/PV.3312

11 November 1993

ENGLISH

883

PROVISIONAL VERBATIM RECORD OF THE THREE THOUSAND  
THREE HUNDRED AND TWELFTH MEETING

Held at Headquarters, New York,  
on Thursday, 11 November 1993, at 11.30 a.m.

President: Mr. JESUS

(Cape Verde)

Members: Brazil  
China  
Djibouti  
France  
Hungary  
Japan  
Morocco  
New Zealand  
Pakistan  
Russian Federation  
Spain  
United Kingdom of Great Britain  
and Northern Ireland  
United States of America  
Venezuela

Mr. SARDENBERG  
Mr. LI Zhaoxing  
Mr. OLHAYE  
Mr. MERIMEE  
Mr. ERDÖS  
Mr. MARUYAMA  
Mr. SNOUSSI  
Mr. KEATING  
Mr. MARKER  
Mr. VORONTSOV  
Mr. YAÑEZ BARNUEVO  
  
Sir David HANNAY  
Mrs. ALBRIGHT  
Mr. TAYLHARDAT

This record contains the original text of speeches delivered in English and interpretations of speeches in the other languages. The final text will be printed in the Official Records of the Security Council.

Corrections should be submitted to original speeches only. They should be sent under the signature of a member of the delegation concerned, within one week, to the Chief, Official Records Editing Section, Office of Conference Services, room DC2-794, 2 United Nations Plaza, and incorporated in a copy of the record.



The meeting was called to order at 12.10 p.m.

ADOPTION OF THE AGENDA

The agenda was adopted.

LETTERS DATED 20 AND 23 DECEMBER 1991, FROM FRANCE, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE UNITED STATES OF AMERICA (S/23306, S/23307, S/23308, S/23309 and S/23317)

The PRESIDENT: As agreed in the Council's prior consultations, I should like to state, in connection with the agenda just adopted, that the current formulation overtakes the earlier two formulations under which this item has been discussed, namely, items 168 and 173 of the list of matters of which the Security Council is seized; that list is contained in document S/25070. Since those items have been subsumed under the present item, they will accordingly be deleted from the list of matters contained in document S/25070.

I should like to inform the Council that I have received letters from the representatives of Egypt, the Libyan Arab Jamahiriya and Sudan, in which they request to be invited to participate in the discussion of the item on the Council's agenda. In conformity with the usual practice, I propose, with the consent of the Council, to invite those representatives to participate in the discussion without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

At the invitation of the President, Mr. Elhouderi (Libyan Arab Jamahiriya) took a place at the Council table; Mr. Elaraby (Egypt) and Mr. Yasin (Sudan) took the places reserved for them at the side of the Council Chamber.

The PRESIDENT: The Security Council will now resume its consideration of the item on its agenda.

The Security Council is meeting in accordance with the understanding reached in its prior consultations.

Members of the Council have before them document S/26701, which contains the text of a draft resolution submitted by France, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

I should like to draw the attention of the members of the Council to the following other documents: S/26304, letter dated 13 August 1993 from the representatives of France, the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations addressed to the Secretary-General; S/26500, S/26523, S/26604 and S/26629, letters dated 22 September and 1, 18 and 22 October 1993, respectively, from the Permanent Representative of the Libyan Arab Jamahiriya to the United Nations addressed to the Secretary-General.

The first speaker is the representative of the Libyan Arab Jamahiriya, on whom I now call.

Mr. ELHOUDERI (Libyan Arab Jamahiriya) (interpretation from Arabic): I congratulate you on your assumption of the presidency of the Security Council this month and commend the efforts made by your predecessor. I do hope that the Security Council will be able to really and truly discharge its functions in line with the purposes and principles of the United Nations

(Mr. Elhouderi, Libyan Arab  
Jamahiriya)

Charter, and to conduct itself in a manner that is compatible with the law and the public interest of the international community. I do hope that bias and special interests will not be given the upper hand and that the Council will steer clear of selectivity and double standard.

The Security Council meets today not to consider a matter that threatens international peace and security but to consider a draft resolution that seeks the intensification of the sanctions which have been imposed on the Libyan Arab Jamahiriya by the Council's resolution 748 (1992). Prior to this meeting, the Council had automatically renewed those sanctions four times over a period of 15 months. So, why intensify the sanctions now? The pretext which the three countries have repeated ad infinitum is the allegation that the Libyan Arab Jamahiriya has not complied with Security Council resolution 731 (1992). However, the truth of the matter is that the Libyan Arab Jamahiriya has fully responded to Security Council resolution 731 (1992). The only point that remains outstanding is the problem that arose from the demand by the United States of America and the United Kingdom that the two alleged suspects be extradited. This is a problem that remains unsolved because of a legal wrangle over which country has the competence in law to try the two persons accused of involvement in the bombing of Pan Am flight 103 over Lockerbie, Scotland.

Essentially, this is a question that is definitively settled by the provisions of the Montreal 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. The Libyan Arab Jamahiriya, the United States and the United Kingdom are all parties to that Convention, which, from the start, stipulates jurisdiction regarding the trial of the accused to the Libyan Arab Jamahiriya. That was the view of the Libyan Arab

(Mr. Elhouderi, Libyan Arab  
Jamahiriya)

Jamahiriya from the very beginning. Accordingly, it acted within that competence as soon as it received the indictments issued by the three countries, which have been circulated as official documents of the General Assembly and the Security Council. Libya announced at the time that it would deal with the indictments constructively and, forthwith, referred them to the Libyan judicial authorities. A judge was appointed to investigate the matter and he started his preliminary investigation by placing the two accused under preventive custody. The United States and the United Kingdom were accordingly notified and were requested to cooperate with the Libyan judicial authorities either by allowing the Libyan judge access to the records of their investigations or by fixing a date for carrying out the necessary investigation. In order to create an atmosphere of trust, to ensure that the proper procedures be followed during the investigation and the trial and to underscore fairness and neutrality, Libya proposed to Mr. Vasilij Safronchuck, the personal envoy of the Secretary-General, during his visit to Tripoli on 26 January 1992, that the two countries send their own judges, or that the Secretary-General call on judges from certain countries, as well as representatives from the League of Arab States, the Organization of African Unity and the Organization of the Islamic Conference, to observe the trial. However, the American and British authorities refused to cooperate with the Libyan authorities.

The intransigence of the two countries, their refusal to apply the provisions of the 1971 Montreal Convention and their insistence on the extradition of the two persons to either one of them hampered the proper procedure of the trial of the two accused. The two countries also refused to submit the case to arbitration, as the Convention stipulates for disputes arising over the

(Mr. Elhouderi, Libyan Arab  
Jamahiriya)

interpretation or application of its provisions. As a result, the Libyan Arab Jamahiriya took the question of the application of the Convention's rules to the International Court of Justice. The matter is still pending before the Court.

Notwithstanding my country's repair to the International Court of Justice and the natural need to await its verdict, we have spared no effort in seriously seeking a solution that would be in consonance with the provisions of the law. My country had proposed to request the International Court of Justice to ascertain the validity of the accusations levelled at the two Libyan nationals and suggested that they be surrendered to the office of the United Nations Development Programme (UNDP) in Tripoli for investigation. Libya also proposed that the Secretary-General form a legal committee composed of fair and neutral judges to investigate the facts of the case, make sure that the allegations against the accused were serious ones and conduct a comprehensive investigation.

(Mr. Elhouderi, Libyan Arab  
Jamahiriya)

Libya declared that if the Secretary-General concluded that the accusations were justified, the Libyan Arab Jamahiriya would not object to the extradition of the two accused, under the personal supervision of the Secretary-General, to a third party, on condition that they may not be re-extradited to any other party. All these proposals fell on deaf ears and were met by insistence on extraditing the two accused - without any legitimate justification, be it in law or in treaty provision - to either the United States of America or Scotland.

We did not extradite the two accused because that is against our laws. The laws of most countries, if not all countries, prohibit such extradition unless there is a treaty or convention regulating such matters between the countries concerned. There are no bilateral treaties between the Libyan Arab Jamahiriya and either the United States or the United Kingdom. There is, however, a multilateral convention that clearly and accurately regulates actions related to attacks against international civil aviation, namely the 1971 Montreal Convention. All of us are parties to that convention. Regrettably, the United States and the United Kingdom declined to comply with the provisions of the said convention and insisted, merely on the basis of their own personal wishes, on the extradition of the two accused to either one of the two countries. We wish to draw attention here to the gravity of involving the Security Council in this game whereby States are forced to surrender their own citizens to other States.

The pretext used by the two countries to circumvent the 1971 Montreal Convention is that they have no faith in Libya's ability to try its own citizens. This claim gives the impression that only their judicial systems are trustworthy, despite events and evidence which suggest the contrary. Suffice it to recall areas of

(Mr. Elhouderi, Libyan Arab  
Jamahiriya)

deficiency in the American judicial system which were revealed by the Rodney King trial in Los Angeles. Furthermore, a report issued by the Gallup Institute and published by a European newspaper reveals that 61 per cent of Britons do not think they could get a fair trial in Britain. A recent trial in Old Bailey, in Britain, also disclosed another aspect of the British judicial system when a judge suspended the trial of three detectives because of the amount and intensity of publicity surrounding the case, and because the media had portrayed the defendants as the perpetrators of the crimes for which they were being tried. This prompted the British newspaper *The Guardian* to ask on 12 October 1993, in an editorial entitled "Fair Trial, Fair Sense",

"Why do the Libyan suspects in the Lockerbie incident fear trial in Scotland, although British ministers and officials confirm that they would receive a fair trial?"

The paper called on the ministers to look into the ruling of the Old Bailey judge and said that the two conditions related to the Old Bailey case apply to the two Libyans. Indeed the Libyans receive even more publicity than the Old Bailey defendants whenever the politicians and journalists rehash the Pan Am incident over Lockerbie. The paper went on to say that the Libyans have indeed compelling reasons to complain.

Moreover, the information gathered by the two countries should not be accepted at face value as irrefutable facts. The United States had previously claimed, on the strength of its own information gathering, that the Libyan Arab Jamahiriya was responsible for the Berlin nightclub incident. On the strength of that information, the United States sent its state-of-the-art planes, at night and carrying the most advanced weapons of destruction, to bomb the cities of Tripoli and Benghazi and the

(Mr. Elhouderi, Libyan Arab  
Jamahiriya)

home of the Leader, killing dozens of innocent people. A trial later proved that the Libyan Arab Jamahiriya had nothing to do with the incident and completely exonerated it. You may also recall that the General Assembly of the United Nations condemned that aggression in its resolution 41/38 (1986), which acknowledged the right of the families of the victims to receive compensation, something which the United States has thus far refused to do. This was an instance of blatant aggression in which military force was used and which jeopardized international peace and security. As such, the Security Council should have considered it. The Council failed to do so because the three States, sponsors of the draft resolution before you today, resorted to the power of veto.

Another example of the fallibility of the information gathered by the agencies of those countries can be found in United Nations General Assembly document (A/48/477) concerning the United States insistence on inspecting the Chinese ship "Yin He" in order to look for two chemicals used in the manufacture of chemical weapons. The document states that

"The 'Yin He' incident is the sole making of the United States side as a result of its erroneous act based on its false intelligence." (A/48/477, annex I, para. 2)

China's insistence that the ship did not carry the two chemicals was to no avail. The United States insisted on inspecting the ship and China insisted that that should be done only in a neutral country. A careful inspection of all containers on the ship proved categorically that the two chemicals were not in the ship's cargo. Is it strange then, in light of the obvious legal nature of this issue, that the Libyan Arab Jamahiriya refuses to surrender the two suspects? And in view of the clear evidence and the definitive



(Mr. Elhouderi, Libyan Arab  
Jamahiriya)

facts, is it strange for Libya to call for the trial to be held in a neutral country?

Despite all of this, Libya submitted the question to the People's Basic Congresses (which has the power to take decisions) in their second session for 1992. Following detailed discussions, the People's Congresses adopted the following decision in relation to the extradition of the two suspects:

"The Basic People's Congresses affirm their adherence to the Libyan Criminal Code and the Libyan code of Criminal Procedure. They raise no objection to the conduct of the investigation and the trial through the seven-member Committee established by the League of Arab States or through the United Nations before a just and impartial court to be agreed upon."

On this basis, my country declared its readiness to enter into negotiations, under the supervision of the Secretary-General of the United Nations, with the countries concerned, with a view to holding the trial in a neutral country which could be agreed upon by the parties to the dispute and which could provide all the necessary guarantees. The Secretary-General of the United Nations was notified of this step on 8 December 1992, but, like previous attempts, this one was rejected by the parties concerned. In its letter to the Secretary-General of the United Nations on 28 July 1993, my country confirmed that it was willing to discuss the procedures and arrangements relating to the trial of the two accused, with the mission the Secretary-General was about to send to Libya. It thus becomes clear that out of our desire to reach a reasonable solution and despite the fact that the 1971 Montreal Convention gives Libya the right to try the two suspects before Libyan courts - a question that is still pending before the International Court of Justice - the Libyan position has been

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extremely flexible. On the other side, there is the rigid and intransigent position based on nothing more than the logic of force.

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The extradition of the two accused was one of the demands made by the three countries. It was demanded also that Libya should take full responsibility for the acts of the two Libyan officials, submit all information it has on the crime and pay appropriate compensation. Do these demands conform to the principles included in various human-rights instruments? Could these two countries treat their own citizens in the same manner they want Libya to treat the Libyans? What logic and what legal system would call on a defendant to submit self-incriminating evidence, bear the responsibility for an allegation made against him and pay compensation, all before any investigation or trial had been undertaken? Then we are told that the sanctions will not be lifted unless the Libyan Arab Jamahiriya fully and effectively complies with these demands. This begs the question: who would decide that such effective and full compliance has taken place? The answer: no one other than the two countries themselves. There is no logic or legal process. It is clear that force, and force alone, is the logic and the process.

Added to this are the Draconian demands aimed at portraying Libya as a country that does not comply with Security Council resolutions and that violates international laws. Consequently, sanctions may be imposed and tightened against Libya. Notwithstanding the strange character of these demands, my country has shown extreme flexibility and has declared its readiness to pay proper compensation if it is proven responsible for this incident.

In its search for a satisfactory solution, the Libyan Arab Jamahiriya did not stop at invoking the law and calling for recourse to judicial authorities. It unilaterally resorted to the International Court of Justice, which is the principal judicial organ of the United Nations. It also talked to the

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Secretary-General of the United Nations, confirming to him its full readiness to cooperate with him and asking that he play a bigger role in helping all the parties to find a reasonable and satisfactory solution.

Libya also contacted other countries and other organizations to which it belongs. All of them expressed their deep concern at the escalation of the crisis between Libya and the United States of America, the United Kingdom and France, as well as at the threat of the imposition of additional sanctions and the use of force in relations between countries. They called for a peaceful settlement of the crisis and appealed to the Security Council to review resolution 748 (1992) and, in recognition of Libya's initiatives aimed at settling the crisis, to lift the embargo imposed on Libya.

In this respect, I should like to recall the resolution adopted by the Council of Ministers of the Organization of African Unity (OAU) at its fifty-eighth ordinary session, which was held in Cairo. That resolution expresses appreciation for the efforts and initiatives taken by Libya in order to settle the crisis peacefully. The third operative paragraph of the resolution reads:

"Expresses its grave concern at the escalation of the crisis and the threats of additional sanctions and the use of force as a pattern of relations among states, in violation of the Charters of the Organization of African Unity and the United Nations as well as international laws and norms". (A/48/322, annex I, p. 47)

In paragraph 5 of the same resolution, the OAU Council of Ministers urges the Security Council to reconsider its resolution and lift the embargo imposed on Libya, in recognition of the positive initiatives Libya has taken in handling the crisis.

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Within the context of our efforts to address this problem, my country submitted to the Secretary-General, on 11 September 1993, a memorandum that contained points relating to its legal position vis-à-vis resolutions 731 (1992) and 748 (1992). In that memorandum, Libya asked questions based on the assumption that the two accused would challenge the charges levelled at them and voluntarily agree to stand trial before a foreign court. The memorandum also asked for clarifications and safeguards relating to the foreign country concerned. On 24 September 1993, my country received the Secretary-General's answers to the questions concerning the two accused.

Although we have not received all the answers, the Secretary-General was notified on 29 September 1993 that we had given the two suspects the answers to the questions about them. We confirmed to him that the safeguards he offered were sufficient and acceptable, and that the Libyan Arab Jamahiriya, following the receipt of those guarantees, would not object to the appearance of the two suspects before the Scottish judiciary and would even urge them to appear. We expressed to the Secretary-General our belief that only one step remained in order to resolve this crisis that has gone on for several years: the acceptance by the two suspects, their families and their attorneys of the necessity of appearing before the court. In those two letters, contained in document S/26523, we emphasized that we would deal with the French demands with the same determination with which we had been dealing with the American and British demands.

As the Council knows, the defence team, which includes legal counsellors of several different nationalities, including British and American attorneys, held several meetings in Tripoli on 8 and 9 October 1993. The two accused themselves attended some of those

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meetings and confirmed their intention to appear before a fair court based on valid legal procedures and a comprehensive investigation, notwithstanding their right, under national and international law, to remain in Libya. The counsellors discussed the inalienable rights of any defendant: the right to a fair trial before an unbiased court, the right to be presumed innocent and the right to have sufficient time to prepare a defense after being notified of the charges and the evidence the prosecution intends to present in support of those charges. These are rights included in the legislation of all countries and contained in the International Covenant on Civil and Political Rights. All of us are parties to this Covenant, which entered into force on 23 March 1976.

The defence attorneys were deeply concerned over the possible prejudicial effect the publicity in the United States and Scotland would have on the prospective jurors and about the absence of the usual arrangements for extradition because of the prosecution's refusal to reveal the evidence it intends to use in the trial. The defence attorneys believe that this refusal greatly limits their ability to defend the case properly.

On the basis of a request made by the defence counsel, my country contacted Switzerland for permission to hold the trial there, and contacts between Libya and Switzerland are continuing to that end.

The negative impact of media publicity surrounding the case is not limited to prospective jurors but has also been extended to defence attorneys. We have witnessed a ferocious attack against an American lawyer when it was thought that he might participate in giving council to the two accused. Obstacles were also put in the way of another American lawyer who participated in the Tripoli

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meeting of the defense counsellors. It thus becomes clear that the concerns of the defence attorneys are rational and justified.

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The Secretary-General of the United Nations and members of the Security Council have been informed of the results of these meetings.

In addition, the Secretary of the General People's Committee for Foreign Liaison and International Cooperation - the Foreign Minister of Libya - during his stay in New York, conducted wide consultations involving most members of the Security Council and the Secretary-General of the United Nations. Our Foreign Minister explained the developments of the crisis and confirmed our determination to implement Security Council resolution 731 (1992).

All of this demonstrates that serious efforts are being made in relation to the trial of the two accused. It also proves that we are not procrastinating or marking time, as the two countries claim. Marking time is not in our interests, as it is our people who are suffering the adverse effects of the sanctions. We are interested in seeing this trial held as soon as possible. No one should forget that we received answers to some of our questions on 24 September 1993 and that the defence lawyers for the suspects met on 8 and 9 October 1993.

As for the French demands, the Libyan Arab Jamahiriya did not see in them anything that runs counter to the law. Intensive contacts and talks between the judicial authorities of both the Libyan Arab Jamahiriya and France were held with a view to reaching a determination of responsibility for the explosion of the aircraft on UTA flight 772. The Libyan and French investigative judges met several times, and the French judge saw the minutes of the investigation undertaken by the Libyan judge. It was agreed that the French judge would come to Libya to continue his investigation. Contacts between the two countries are already under way with a view to enabling the French judge to complete this endeavour. I



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believe that had the French judge not chosen a military destroyer as a means of transport to Libya our response to the French demands would have led to encouraging results.

Only three months and a few days after the adoption of Security Council resolution 731 (1992), the three countries managed to get the Security Council to adopt its resolution 748 (1992), in which the question of terrorism was widely and artificially included. It contained an exceptional accusation, on which was based an unprecedented air and diplomatic embargo. All of this was done with unprecedented speed and decisiveness, and in violation of many provisions of the United Nations Charter.

It is obvious that the three countries succeeded in making the Council compress the whole phenomenon of international terrorism into the Lockerbie and UTA incidents. The Libyan Arab Jamahiriya has been linked intentionally with the phenomenon of international terrorism so that the three countries may be able to achieve their goals. If it is claimed that the Security Council wants to devote special attention to civil-aviation incidents, the Council should also have looked into the incidents involving the Korean, Iranian, Libyan and Cuban civil aircraft, to avoid appearing selective in its work or being accused of applying double standards.

However, let us look at the position of the Libyan Arab Jamahiriya on this matter. My country, which has endured terrorism in the recent past and still suffers today, declared, in a letter to the Secretary-General of the United Nations on 11 May 1992 (S/23918), its unequivocal condemnation of international terrorism in all its forms, regardless of its source. Libya confirmed that there are no terrorist training camps, terrorist organizations or terrorist groups on its soil. We called for the dispatch of a committee of the Security Council, the United Nations Secretariat

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or any other competent United Nations body, to verify this at any time. My country also declared that it will never permit the direct or indirect use of its territory, citizens or institutions in the perpetration of any terrorist acts and that it is ready to punish severely those who are proved to have been involved in such acts.

The Libyan Ministry of Foreign Affairs issued a statement confirming the contents of this letter, and the statement was circulated as an official Security Council document (S/23917). My country reaffirmed its position in its letter dated 8 December 1992 (S/24961) to the Secretary-General. In a letter dated 28 July 1993 to the Secretary-General, Libya stated its readiness to receive a mission of the Secretary-General's choice to verify the non-existence of alleged terrorist training camps on its soil. In addition, my country actively cooperated with Britain in respect of that country's special requests.

However, none of this has been sufficient for the three countries, which have refused to send a mission to verify the non-existence of camps and other facilities. Thus they hope to keep the terrorism charge hanging over Libya like the sword of Damocles and to justify the continuation and intensification of the sanctions. They base their case on the pretext that Libya has not complied with Security Council resolutions, and they rely on an enigmatic phrase to the effect that Libya knows what is required of it.

What more can Libya do? What should Libya do to persuade the three countries to stop levelling such allegations and accusations? Will the three countries respond to Libya's request for a mission to verify that there is no basis for such allegations?

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The sanctions, which have been imposed because of a legal dispute, into which the question of terrorism was deftly inserted have severely hurt our people in all aspects of their lives and have had a negative impact on our development plans. We have submitted to the Security Council 14 documents detailing the harm caused to various sectors. I shall not repeat the contents of those documents, but I should like to refer specifically to the adverse effects of the prohibition on the export to Libya of spare parts, engineering services and maintenance required for Libyan aircraft and their components. These adverse effects impact on a vital sector that is indispensable to a vast country that depends largely on air transport.

The United States of America and the United Kingdom are not satisfied with the sanctions contained in resolution 748 (1992). They have been trying, under the auspices of the Committee established by that resolution, to widen the scope of the sanctions, using transparent pretexts and rigid positions. This includes the success of the two countries in widening the scope of the sanctions through the Committee's rejection of cooperation between the International Atomic Energy Agency and Libya for the establishment of a laboratory at the Centre for Agricultural Research in Tripoli to analyze the effects of agricultural insecticides on the health of human beings, animals and plants. It includes also the Committee's refusal, without explanation, of the humanitarian request concerning the transport of Libyan citizens to locations abroad - using Libyan aircraft - for medical treatment. These patients included cases of coma, quadruple paralysis, brain concussion resulting from traffic accidents and sudden health deterioration necessitating advanced medical treatment. One of them was a young girl of six, named Safaa Ali Abdel Rasoul, who

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died at Tripoli Central Hospital as a result of complications arising from her illness.

In view of the Committee's abuse of its mandate, the competent authorities had to move other emergency cases, using various modes of conveyance, including land, sea and air transport. This resulted in patients' having to endure long, hard journeys, as is outlined in the memorandum sent to the Committee by the Libyan mission on 18 August 1993.

One of the Council's main reasons for the establishment of this Committee was to facilitate consideration of the requests submitted by countries for approval of flights for essential humanitarian purposes. The repeated refusal of requests for permission to move seriously ill persons - arbitrary refusals, with no reasons given to justify them - nullifies the resolution's only humanitarian gesture. Furthermore, these repeated refusals continue to severely harm innocent people. This can be neither the intention nor the objective of the United Nations. The three countries have not limited themselves to expanding the scope of the sanctions, but have extended this behaviour to include the Committee's methods of work, putting it on a consensus basis that runs counter to the provisions of the Charter and the Security Council's provisional rules of procedure.

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Selection of the harshest sanctions, which are not commensurate with a legal dispute, attempts by the three countries to expand them, and to exert continuous pressure on the Security Council to impose yet more sanctions, prompt us to wonder about the real reasons behind this ferocious campaign against the Libyan Arab Jamahiriya. The three Governments, while closing every door that could lead to a solution to the crisis either in regard to the trial of the two accused or to the verification of the allegations that the Libyan Arab Jamahiriya supports international terrorism, declared, in their tripartite statement of 12 August 1993, that they had no "hidden agenda". The United States of America and the United Kingdom intentionally refused to answer Libya's specific questions related to international terrorism and the lifting of the sanctions. Even when one of the two countries hinted at the possibility of suspending or lifting the sanctions, the answers have been vague and conducive to suspicion rather than to confidence. The bottom line is that the whole issue remains the preserve of the two countries.

The draft resolution now before the Council, document S/26701, repeats the very same grave legal mistake of both resolutions 731 (1992) and 748 (1992) in that it links Libya to international terrorism on no other basis but the suspicions that have been created regarding two Libyan nationals on the basis of reports by intelligence agencies. This constitutes an a priori judgement that has not been substantiated by any evidence up to this point. They want the draft resolution to be adopted under Chapter VII of the Charter on a matter which should have been dealt with by the Council under Chapter VI, due to the fact that the issue in question is a legal dispute over which country has competence to

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try the two accused, a dispute which is essentially settled by the provisions of the 1971 Montreal Convention.

This draft resolution has no justification whatsoever, especially since we are approaching the final phase in the settlement of the dispute. Moreover, it contains more unprecedented sanctions. It is an attempt to destroy the Libyan economy by adversely impacting on our people's only source of income, as well as on the civil aviation structure on which my country depends for transportation. The paragraphs of the draft resolution include provisions which prove beyond doubt that its sponsors do have a hidden agenda. Otherwise, what is the meaning of operative paragraph 4, which calls for depositing the financial revenues from the sale of oil and agricultural produce in separate bank accounts? And what is the meaning of operative paragraph 16 which refers to the suspension of sanctions and their reimposition within 90 days?

The sponsors of the draft resolution insist on ignoring the decisions of regional and other organizations on the matter and turn a deaf ear to their points of view by stating in operative paragraph 15 that all Member States should encourage Libya to respond fully and effectively to these requests. The States we refer to have already expressed their views in the resolutions adopted by the Arab Maghreb Union, the League of Arab States, the Organization of African Unity, the Organization of the Islamic Conference, and the Non-Aligned group. None the less, there is an insistence on ignoring all these decisions and resolutions. We would like to know the relationship between the maintenance of international peace and security and the contents of operative paragraphs 8, 11 and 12. Does this not constitute an interference in the minute internal affairs of States and does it not,

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therefore, constitute an obstruction of justice in those States in addition to being an imposition of a strange kind of tutelage over them, all because of a dispute over the venue where two accused persons should stand trial? In operative paragraph 16 what then is the meaning of the phrase:

"... the Libyan Government has ensured the appearance of those charged with the bombing of Pan Am 103 for trial before the appropriate United Kingdom or United States court ..."?

Once again we should like to draw attention to the dangers of involving the Security Council in the question of extradition, which is a sensitive and complicated legal issue that requires the conclusion of bilateral or multilateral agreements following negotiations between the States concerned. To involve the Council in questions such as these would set a dangerous precedent. The harm caused by this draft will not be limited to the Libyan people alone, but will extend to neighbouring and European countries whose interests are linked to ours. It will have adverse effects on the overall process of foreign investment. These harmful effects will undermine the security and stability of our region, which, at this time, is in dire need of security and stability.

The draft resolution constitutes a blatant violation of the provisions of the United Nations Charter and the norms of international law. Should it be adopted as it stands and in this manner, it will represent a dangerous turning point in the work of the Council, and constitute clear proof that the Council does not work on behalf of all the Members of the United Nations, but in accordance with the wishes of one or two countries.

The continuance and intensification of sanctions will not solve the problem. It will even complicate it. What we have here is a dispute that could have been easily resolved had the three

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countries complied with the provisions of the 1971 Montreal Convention. Now we have two positions: the position of the Libyan Arab Jamahiriya, which is supported by law and the provisions of international conventions, and the position of the three countries, which is based only on their claims and allegations. While the position of the former is characterized by great flexibility, the position of the latter is rigid and intransigent, based only on allegations and undisclosed reasons linking Libya to the international terrorism phenomenon which has been under consideration by the United Nations for many, many years. As a result, the Security Council has been hastily pushed into action under Chapter VII instead of Chapter VI of the Charter, imposing harsh sanctions which are not commensurate with the dispute at hand.

We do not want to underestimate the seriousness of the two incidents which caused the loss of innocent lives, because we too have been burned by the fire of international terrorism, but we want to put things in the right context and perspective, using an objective approach and avoiding the use of exaggeration and excess as others do. We do not want to cover up anything related to the two accused or to procrastinate in order to waste time. We never disagreed as to the principle of the trial. The disagreement has been, and still is, on the venue of the trial. The two suspects and their attorneys do not disagree as to the principle of the trial, but want a place where neutrality and fairness can be guaranteed and where the proper procedures and arrangements for such a trial can be made. The Libyan Arab Jamahiriya will continue its sincere efforts to find a solution to this problem within the framework of respect for the principles of international law and the provisions of the relevant international instruments.



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Furthermore, Libya considers that its efforts will achieve this end if the three countries abandon their policies of pressure and threats and respond to the language of dialogue and understanding which my country advocates and pursues. If the Security Council plays a positive role in a collective spirit, lifts the sanctions that only complicate this matter further, and assists the parties concerned to follow the right, peaceful path, it will have made an important contribution towards the achievement of that goal.

My country will continue to do its utmost to cooperate with the Secretary-General of the United Nations in order to reach a final solution of this problem.

The PRESIDENT: I thank the representative of the Libyan Arab Jamahiriya for his kind words addressed to me.

The next speaker is the representative of Egypt. I invite him to take a place at the Council table and to make his statement.

Mr. ELARABY (Egypt) (interpretation from Arabic): Allow me at the outset to extend to you, Sir, my congratulations on presiding over the Security Council for this month. I am confident that your great diplomatic skills and personal qualities, which are well known to all, will benefit the Council's work. I should also like to extend to your predecessor, Ambassador Sardenberg, our thanks for the skill with which he steered the Council's work last month.

Egypt has followed with great interest and concern the developments relating to the two criminal acts that resulted in the loss of hundreds of lives, namely Pan Am flight 103 over Lockerbie, and the bombing of UTA 772. There can be no doubt that safeguarding the safety and security of civil aviation are prerequisites of today's world. Egypt supports fully all international efforts designed to eradicate the destructive phenomenon of terrorism completely. Egypt has expressed its deep concern over the incidents and condoled with the families of the victims of those two incidents.

According to the provisions of international law, all who perpetrate such crimes must be identified and brought to justice. When the crime is proved, the penalty must follow, again according to the provisions and principles of international law. Equal rights and duties under the law and equal application of international law form the basis for the criteria upon which the contemporary international legal system rests.

The international community has condemned all acts of terrorism in all its forms on more than one occasion. The

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principal objective of the Council's adoption of resolutions 731 (1992) and 748 (1992) was to attempt to obtain the facts underlying those two incidents and to determine where the responsibility lies with regard to the terroristic acts against Pan American flight 103 and UTA flight 772.

My delegation, therefore, regrets that the truth and the facts with regard to those two acts have not yet been clarified and that no progress has been made in arriving at the truth clearly and unambiguously, despite the resolutions adopted by the Security Council and the unremitting efforts made by the United Nations Secretary-General, which my Government greatly appreciates, and in spite of the intensive bilateral contacts Egypt has made to find a suitable formula that would allow for implementation of the two resolutions.

Egypt has scrupulously abided by the resolutions adopted by the Security Council because we are fully convinced of the need to respect all resolutions adopted by the Council in line with the Charter. We call upon all the members of the international community to abide by that fundamental principle without exception and without resort to double standards when confronting the various issues with which the Security Council addresses.

Egypt, in the active role it has continued to play in attempting to contain the crisis arising from the Lockerbie incident and prevent the escalation of tension has never lost sight of any of the vital elements that might lead to a breakthrough in the situation, foremost among which is the opportunity for justice to take its course and for an unambiguous decision to be reached with regard to the responsibility of the perpetrators of such acts. At the same time, Egypt has sought to spare the region any further escalation of tension in a manner that would have deleterious effects on the interests of the fraternal people of Libya and on

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their aspirations after prosperity and development, in the first instance, and on the stability and prosperity of the peoples of neighbouring countries at a time when ever-greater hopes for peace, justice and stability in the region seem about to be realized after long years of struggle, tension and armed conflict.

The Security Council is to vote today on a draft resolution aimed at finding a solution to the problem created by the two incidents, the Lockerbie flight and UTA 772, by intensifying economic sanctions against Libya. Here, we have a question: Will the tightening of sanctions lead to the truth? Egypt would have preferred further efforts and further contacts in an attempt to implement the resolutions adopted by the Council, for the intensification of sanctions will surely have a negative impact on the innocent and not necessarily lead to the truth regarding those two incidents.

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For this reason, Egypt calls upon the Security Council to keep in sight all the consequences that will impact negatively on the people of Libya and on the neighbouring peoples of the region. Article 50 of the Charter stipulates that any State which finds itself confronted with special economic problems arising from the carrying out of enforcement measures against any State shall have the right to consult the Security Council. This means that the Council should today consider alleviating the economic suffering of Libya and of its neighbours that would arise from the adoption of the draft resolution under consideration.

Despite the expected adoption of the draft resolution on today's agenda, Egypt will continue to deploy its efforts, in cooperation with all the parties concerned, in order to reach as soon as possible a solution to this crisis that would safeguard the interests of all and provide for the full implementation of the Security Council's resolutions, which should be respected and implemented.

The PRESIDENT: I thank the representative of Egypt for his kind words addressed to me.

The next speaker is the representative of Sudan, who wishes to make a statement in his capacity as Chairman of the Group of Arab States for the month of November. I invite him to take a place at the Council table and to make his statement.

Mr. YASIN (Sudan) (interpretation from Arabic): I wish to thank you, Sir, and through you the members of the Security Council, for giving me the opportunity to speak, on behalf of the Sudan and the States members of the League of Arab States, on the important issue before the Council today. I seize this opportunity to congratulate you most sincerely on your accession to the presidency of the Security Council for this month, the work of which is replete with highly significant issues.

(Mr. Yasin, Sudan)

I also wish to congratulate your predecessor, Ambassador Sardenberg, the permanent representative of Brazil, who discharged his duties as President last month in an able and commendable manner.

The crisis between the Libyan Arab Jamahiriya on the one hand and the United States of America, France and the United Kingdom on the other, concerning the downing of Pan Am 103 and UTA 772, has been dealt with by the Council for three full years. This crisis figured prominently in the news media in a manner that qualifies it to be considered as one of the most important legal disputes between States both in terms of the principles involved and of its position within the framework of international law. It is also an important case in terms of the requirements of justice, such as the availability of evidence, neutrality and the removal of any extraneous factors that might affect the case and consequently the course of justice and, concomitantly, the nature of the verdict.

The Council is today dealing with an item that has become established on its agenda. This is an inescapable reality that must be addressed. However, this should be done in consonance with the spirit of the Charter and especially on the basis of Article 33 of Chapter VI of the Charter. It is relevant to point out here, from the outset, that we appreciate the fact that this dispute is legal in nature and belongs in the courts and institutions directly concerned, and not in the Security Council, which is not mandated by the Charter to exercise such a function. Now that the Council is seized of this matter, the matter has, of necessity, become a political dispute which we are uncertain as to whether it could be addressed properly in its correct context. Here we should think of similar conflict situations which could arise in the future and for dealing with which the international community should establish appropriate rules.

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The entire international community has been saddened by these two tragedies. We condole with the families of the victims and we associate ourselves with those who condemn the perpetrators of these two hideous crimes. We also unconditionally condemn terrorism in all its aspects. In this context, let us review the course of events and positions since the Council first began its consideration of this case.

The Council adopted resolution 731 (1992), which imposed specific sanctions against the Libyan Arab Jamahiriya. It periodically reviews these sanctions, on the basis of cooperation or non-cooperation of the Libyan Arab Jamahiriya with the Council. It is curious that this resolution is based on Chapter VII of the Charter, which addresses situations of aggression that threaten international peace and security. This does not apply to the current dispute between Libya and the three aforementioned States which is a legal dispute that has to do with the extradition of two accused Libyan nationals. Such a dispute should be dealt with in a court of law, and specifically by the International Court of Justice. Alternatively, it should be addressed in conformity with Chapter VI of the Charter.

Having found itself caught up in these events, how did Libya respond? It responded comprehensively, with the aim of arriving at the truth concerning these two regrettable incidents. It called for a legal, objective and neutral investigation regarding the accusations levelled at its two Libyan nationals. It expressed its full willingness to accept the judgment of the International Court of Justice in the relevant case of competence now before the World Court. It declared itself ready to consider any other proposals made in conformity with the principles of law and Libyan sovereignty. It expressed its eagerness to respond to international efforts aimed at resolving the conflict through

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negotiations mediation and legal settlement, in accordance with  
Article 33 of the United Nations Charter.



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It expressly condemned terrorism and stated its willingness to cooperate with any party or with any international effort to eliminate that phenomenon.

It declared its willingness for the two accused Libyan nationals to surrender themselves voluntarily to the Secretary-General of the League of Arab States. It stated that in the meantime it would be willing to find a practicable way of implementing resolution 731 (1992) in the context of international law and justice and national sovereignty.

Libya also reaffirmed its commitment to implement the findings of the International Court of Justice and its acceptance of Security Council resolution 731 (1992) in all its aspects. It expressed its willingness to cooperate with the Secretary-General of the United Nations with respect to the legal aspects of the resolutions in question and with respect to conducting a neutral investigation or having recourse to a neutral court or international court. Moreover, Libya took steps to implement that undertaking; it called upon the United Nations to send a fact-finding mission and solemnly undertook to pay compensation in the event that it was found responsible for the incident.

It accepted all the demands calling for the trial of the two accused and undertook to do all it could in the event that they refused to place themselves before the court they are required to submit to, and that despite the objection of the defence counsel of the accused and despite the fact that that would not conform with national and international laws applicable in such cases.

As a regional forum, the Arab League Council includes the Arab States located in a sensitive area. By its mandate, it deals with all issues of importance to the States of the region. It

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pronounces itself on those issues and on the aspirations of those States and is committed to acting in the interests of its members. The Arab League Council reacts to events in the region and expresses its views on them. The matter before the Security Council today directly concerns a State member of the League of Arab States.

In conformity with its responsibilities and its commitment to peace and security in the region, the Arab League Council has stated its increasing interest in this conflict and its willingness to provide its good offices and cooperate with the Secretary-General of the United Nations and the Security Council in resolving this deteriorating conflict.

In that context, the Arab League Council has formed a seven-member committee under the chairmanship of the Secretary-General of the League of Arab States; the members are the Foreign Ministers of Mauritania, Morocco, Algeria, Tunisia, Libya, Egypt and Syria. The committee was charged with following developments and making the necessary contacts; it was to spare no effort to stop the escalation of the crisis and find just and peaceful solutions in conformity with the rules of international law, justice and the relevant international treaties.

The Middle East stands at the threshold of new prospects. Everyone hopes to see the culmination of new steps to achieve a just, lasting and comprehensive peace; this demands self-restraint and the avoidance of any action that could escalate or multiply tensions. In dealing with the crisis, the League of Arab States was therefore careful to base itself on the United Nations Charter, which stipulates that all international disputes should be settled

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by peaceful means and without endangering international peace and security, and especially on Article 52 of the Charter.

The seven-member League of Arab States committee has submitted its report to the Secretary-General of the League; this was approved by the Arab League Council at its one-hundredth session, held in September 1993 in Cairo. In its report the committee attached importance to the positive proposals included in Libya's memorandum dated 11 September 1992 addressed to the Secretary-General of the United Nations, which contained new elements that would help find a settlement through dialogue and negotiation. The committee voiced its concern at and its rejection of a policy of escalating threats and denials pursued by the three parties, and called for a response to the positive initiatives and efforts, including the important Libyan memorandum submitted to the Secretary-General.

The committee expressed its determination to continue its efforts and its contacts with the Secretary-General and the members of the Security Council with a view to preventing an escalation of the crisis and to fostering constructive, positive dialogue towards an appropriate settlement.

The committee charged the Secretary-General of the League of Arab States with intensifying his efforts and his contacts with all parties to the crisis and with the Secretary-General of the United Nations with a view to reaching a fair settlement based on the principles of international law and the need to safeguard Libyan sovereignty.

I have gone into such detail with a view to stressing the good intentions of the Libyan Arab Jamahiriya and the efforts of the League of Arab States and its Secretary-General,

(Mr. Yasin, Sudan)

Mr. Ahmed Esmat Abdel Meguid, and to underscore our sincere wish to resolve this conflict within the framework of law and the sovereignty of States. The Arab countries have always sought justice and equality in all their dealings, and have refrained from applying double standards in dealing with issues. The Non-Aligned Movement and regional groupings including the Organization of the Islamic Conference and the Organization of African Unity have expressed their concern with respect to the difficulties faced by the Libyan people as a result of the implementation of resolutions 731 (1992) of 21 January 1992 and 748 (1992). The people of Libya have been subjected to actions that have crippled its economic growth; these have assailed vulnerable groups such as children, the ill and the aged. They have deprived the Libyan Arab Jamahiriya of its legitimate right to contact the outside world by means of available communication channels; this has hurled it back to a time when communications were extremely difficult.

The impact of the siege has gone beyond the people of Libya to affect neighbouring countries with social and cultural links to that people. Article 50 of the Charter can be of only minimal help to those who are suffering as a result of the implementation of these resolutions.

All of this occurs as a result of the implementation of resolutions that appear to uphold the rules and to apply justice but that are not based on the legal justifications that are traditional for fairness.

(Mr. Yasin, Sudan)

The draft resolution before this distinguished gathering, in our opinion, is not the best way to end the dispute. It will lead to negative results: it could shake the confidence of the smaller countries in this Council's neutrality when dealing with controversial matters and because of overlapping competence of the mechanisms engaged in the settlement of international disputes, it could pave the way for international and regional conflicts through the prevention of action by the mechanisms that are closely related to the issues.

The invariable principles and rules of justice and public law are violated when an adversary is judge and jury and when the accused is not presumed innocent until proven guilty. The interpretation of legal texts and especially of the Charter is the duty and competence of the courts, and there is no way for any other body to arrogate that competence to itself except by force.

The mechanisms for the settlement of disputes and the preservation of international peace and security constantly can fall victim to the impact of negative information by the media. This leads to the absence of any guarantee for a fair trial that would guarantee for the accused the right to appear before a neutral court, to be presumed innocent until proven guilty as well as the right to thoroughly and sufficiently prepare their defence after being informed of the charges levelled at them and of the evidence presented by the prosecution.

We leave this meeting with a feeling of immense sorrow at the lack of a clear vision regarding an important issue such as this one, an issue which relates to the application of the norms of justice and to respect for the sovereignty and sacredness of the law and respect for the Charter which we have all accepted. The Charter is binding because it stands for reconciliation between

(Mr. Yasin, Sudan)

nations and is a voluntary contract between those who are parties to it. It is upheld and its provisions are enforced so long as it is used for the purposes it was formulated for.

The PRESIDENT: I thank the representative of the Sudan for his kind words addressed to me.

It is my understanding that the Council is ready to proceed to the vote on the draft resolution before it. Unless I hear no objection, I shall take it that that is the case.

There being no objection, it is so decided.

I therefore put to the vote the draft resolution in document S/26701.

A vote was taken by show of hands.

In favour: Brazil, Cape Verde, France, Hungary, Japan, New Zealand, Russian Federation, Spain, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela

Against: None

Abstaining: China, Djibouti, Morocco, Pakistan

The PRESIDENT: The result of the voting is as follows: 11 votes in favour, none against, and 4 abstentions. The draft resolution has been adopted as resolution 883 (1993).

In view of the lateness of the hour, I intend to suspend the meeting now. With the concurrence of the members of the Council, the meeting will resume at 3.30 this afternoon.

The meeting was suspended at 1.35 p.m. and resumed at 3.50 p.m.

The PRESIDENT: I shall now call on those members of the Council who wish to make statements following the vote.

Mrs. ALBRIGHT (United States of America): The resolution we have adopted today demonstrates for all to see that this Council is steadfast in its opposition to international terrorism. The journey to this resolution has not been easy. But the path of justice rarely is.

Citizens of 30 nations fell victim to the terrorist attacks that destroyed flights Pan Am 103 and UTA 772. Nearly two years ago, the Council adopted resolution 731 (1992). Put simply, the Libyan Government has refused to heed that resolution. Since then, Libya has spared no effort to break this Council's resolve. It has sought through intermediaries, surreptitious offers, and spurious promises to compromise the will of the international community - and to stave off today's action.

The Council can be proud that Libya's efforts to stop this resolution have failed. Terrorism is a challenge to every nation in the world. My Government, in response, is determined to pursue justice. And the pursuit of justice must, when necessary, include mandatory sanctions of the Security Council.

The fight against international terrorism must be a collective effort. In working with the Governments of the United Kingdom and France, the United States has led that effort. We have worked closely with every member of the Council. The resolution is balanced and precisely targeted. Its hallmarks are an assets freeze, a limited equipment embargo against the Libyan oil industry and the tightening of earlier sanctions imposed under resolution 748 (1992). To those who say it is not strong enough, I ask this: Why did Libya try so hard to stop this resolution if the sting of its new sanctions is so mild?

(Mrs. Albright, United States)

Libya knows what it must do to comply. We await the turnover of those indicted for the bombing of Pan Am 103. We await the Libyan Government's cooperation with the French judiciary. We await compensation for the victims of Libyan terrorism. And we await the Libyan Government's clear and confirmed renunciation of terrorism.



(Mrs. Albright,  
United States)

The United States has long imposed national sanctions against Libya that go far beyond those adopted by the Council. Still, the United States has committed itself to proceeding fairly and equitably in the process leading to our vote today. We have considered and respected the views of those countries whose economic interests at stake might exceed our own. This resolution is directed at Libya, and Libya alone. For each day that passes without the Libyan Government's compliance, the Libyan people will pay a greater price.

Let me emphasize a broader point. By strengthening sanctions today, the Security Council has again shown the flexibility of sanctions as a diplomatic tool; and the more we demonstrate that this Council can impose, lift, suspend or strengthen sanctions at will, the better the sanctions stick can serve our diplomacy.

The tragic attacks against Pan Am 103 and UTA 772 struck at innocent victims. Their families have awaited our response. Today the Council is responding. We must now await Libyan compliance, but we shall do so determined to persevere until justice is done.

Mr. MERIMEE (France) (interpretation from French): It is regrettable that today our Council has had to adopt a resolution tightening sanctions against Libya.

It is almost 20 months since the Security Council requested, in resolutions 731 (1992) and 748 (1992), that that State commit itself concretely and definitively to cease all forms of terrorism and all assistance to terrorist groups; that it hand over the two suspects in the attack on Pan Am 103; that it fully meet the requests of the French magistrate in charge of the investigation into the attack on UTA 772; and, finally, that it provide all the evidence and all the information available to it regarding these two crimes.

(Mr. Mérimée, France)

Our three Governments had thought they could expect a swift settlement of this very painful matter, thus making it possible for the families of the 441 victims of the attacks against the Pan Am and UTA flights to obtain justice at last.

My delegation would like to express its great appreciation to the Secretary-General, whose considerable efforts have been thwarted by the evident bad faith of the Libyan authorities. They have repeatedly made declarations of intent and have systematically been evasive when the time came to act.

In their desire to reach a successful outcome, my Government and the Governments of the United Kingdom and the United States, despite everything, decided to give that country a final chance to prove its good will by complying with its obligations before 1 October 1993. Unfortunately, the Libyan authorities have shown yet again that they only desire to play for time, and they continue their delaying tactics and their obstruction.

We consider that the Libyan Government has sought literally to take advantage of our Council. There is a clear contradiction between the letters dated 29 September and 1 October 1993 to the Secretary-General from Libya's Foreign Minister and Colonel Qaddafi's latest positions, which close the door to any solution. Libya may still hope to have it believed that it is prepared to do what the Security Council expects of it, but no one can be duped any longer.

It was essential to respond. That is why we calmly but resolutely consulted the other members of the Council about strengthening the sanctions.

We are now, much to our regret, caught up in the logic of escalation. My Government hopes that this reinforcement of the sanctions, albeit moderate, will make the authorities in Tripoli understand that the resolve of the international community and

(Mr. Mérimée, France)

the Security Council is unflagging and that they will not be satisfied by the indefinite continuation of the status quo.

The three sponsors of the resolution have been accused of having a hidden agenda against the Libyan regime. The text of the resolution that our Council has just adopted shows that that is not so, and it paves the way for a speedy solution. If the Libyan Government cooperates effectively with my country's judicial authorities in the UTA 772 case, and if it hands over to the competent courts the two suspects in the attack on Pan Am 103, the Council will immediately be able to adopt a resolution suspending the implementation of all the sanctions.

This is no empty offer. The entire mechanism set up by resolution 731 (1992), resolution 748 (1992) and today's resolution would cease to apply in those circumstances, and only a Security Council resolution would reactivate it, if necessary.

We hope, however, that after this first decisive step Libya will be anxious to achieve full reintegration into the international community. All it would have to do would be to comply with its other obligations. The report then submitted by the Secretary-General would allow the Security Council to take a decision on the formal and final lifting of the sanctions regime.

Finally, I express the hope that the Libyan authorities will heed our Council's message and will take the just measures expected of them by the families of the victims.

Sir David HANNAY (United Kingdom): It is now some 20 months since the adoption of Security Council resolution 748 (1992) and nearly five years since the destruction of Pan Am 103 over Lockerbie. The Libyan Government is still failing to comply with Security Council resolutions and to recognize the determination of the international community to fight international terrorism. That has left no alternative to further sanctions.

(Sir David Hannay,  
United Kingdom)

The objectives of the sponsors remain strictly limited. They are to secure justice for the victims of Pan Am 103 and UTA 772 and to ensure that such atrocities do not happen again. Central to these objectives is that the two men accused of the Lockerbie bombing should stand trial in Scotland or the United States and that the demands of French justice regarding the UTA case be met.

My Prime Minister and Foreign Secretary have repeatedly given assurances that if the two Lockerbie suspects went to Scotland they would receive a fair trial, with the full protection afforded by Scottish legal procedures. I now reiterate those assurances. My Ministers have also made it clear that we are pursuing no hidden agenda. Our agenda is set out in Security Council resolutions 731 (1992), 748 (1992) and the present resolution - no more and no less.

The new resolution adopts a carefully balanced approach. Thus, in addition to the stick of further sanctions, there is also a carrot: if the Secretary-General reports to the Council that the Libyan Government has ensured the appearance of those charged with the Lockerbie bombing before the appropriate United States or Scottish court and has satisfied the French judicial authorities with respect to the bombing of UTA 772, then the Security Council will review the sanctions with a view to suspending them immediately. We see this suspension of sanctions as a preliminary to their being lifted immediately Libya has complied fully with resolutions 731 (1992) and 748 (1992). This new element, which was not present in resolution 748 (1992), is designed to make it clear that sanctions are not intended to punish; they are intended to bring Libya to compliance, and no more than that.

The resolution contains a grace period before the sanctions come into effect. There has already, in our view, been too much

(Sir David Hannay,  
United Kingdom)

delay and prevarication by the Government of Libya. But, since our sole aim is to resolve this issue, and not to impose sanctions for the sake of sanctions, we have agreed to the grace period. We hope Libya will take advantage of this extra time to hand over the two Lockerbie suspects and satisfy the demands of French justice. Then the new sanctions would never need to go into effect and the existing ones could be suspended.

We are particularly grateful to members of the Council, to the Secretary-General and to a number of other Members of the United Nations for supporting these resolutions and for seeking to persuade the Libyan Government to comply with them. We hope they will continue their efforts. It is important not only to secure justice for the victims of Pan Am 103 and UTA 772, but also to send a clear message to current and would-be terrorists and sponsors of terrorism: terrorism is a blight that the international community will neither condone nor tolerate, and it is not cost-free.

Mr. SARDENBERG (Brazil): The action taken today by the Security Council involves determination of the existence of a threat to international peace and security as a result of two incidents of the utmost gravity, as it involves a number of legal questions that have been the subject of controversial debate within and outside this Council.

The terrorist attacks against Pan Am flight 103 on 21 December 1988, which caused the deaths of 270 people, and against UTA flight 772 on 19 September 1989, in which 171 people were killed, caused the deepest outrage and sadness in Brazil. Those abominable, senseless, criminal acts have received the strongest moral and political condemnation. And it could not have been otherwise.

Indeed, such crimes call for resolute and effective action so that the persons responsible for them may be appropriately prosecuted and punished. This demand for justice is not only that of the families and friends of the victims of those crimes; it is widely shared by the whole international community and is very much the wholehearted sentiment of the Brazilian Government.

Brazil's support for the resolution that has just been adopted is an expression, in specific and clearly exceptional circumstances, of our unswerving commitment to international cooperation to eradicate the scourge of international terrorism. That is, in our assessment, the political thrust of this resolution, and that is what has received our support.

It is our view that all resolutions of the Security Council must be complied with. Resolutions 731 (1992) and 748 (1992) - both adopted at a time when Brazil was not a member of the Security Council - are no different. The fact that those resolutions deal

(Mr. Sardenberg, Brazil)

with a uniquely serious and complex case of international terrorism makes it all the more important and urgent for this Council to enforce compliance with its previous decisions on the matter. The resolution now adopted is directly linked to those previous decisions, whose implementation it is intended to promote.

It is also our view that the strong measures of sanction that this Council is empowered to impose under Chapter VII of the Charter constitute a last resort, to be used only in exceptionally grave circumstances that involve a clear and direct threat to international peace and security. It was thus only after carefully pondering the extremely serious nature of the case before us, as well as the negative consequences that would ensue should the Council be unable to act, that we decided to cast a positive vote on this resolution.

Having explained the reasons for our political support for the resolution, I wish to stress that our positive vote was cast without prejudice to our position on various aspects of a legal nature that are involved in the actions taken by the Council in relation to this case. In this connection, I wish to place several points on record.

It is our considered view that efforts to combat and prevent acts of international terrorism must be based on strong and effective international cooperation on the basis of the relevant principles of international law and the existing international Conventions relating to the various aspects of the problem of international terrorism. The basic imperative in the prevention of terrorist acts of an international nature - as expressed, for example, in resolution 44/29 of the United Nations General Assembly - is that States must invariably fulfil their obligations

(Mr. Sardenberg, Brazil)

under international law and take effective and resolute measures to prevent such acts, in particular by ensuring the apprehension and prosecution or extradition of the perpetrators of terrorist acts.

The need to strengthen international cooperation in accordance with those principles remains unchanged. As provided for in Article 24 (2) of the Charter, the Security Council is bound to discharge its responsibilities in accordance with the purposes and principles of the United Nations. That means also that decisions taken by the Council, including decisions under Chapter VII, have to be construed in the light of those purposes and principles, which, inter alia, require respect for the principles of justice and international law.

As was noted by some delegations in statements made in this Council on 21 January 1992, upon the adoption of resolution 731 (1992), the exceptional circumstances on which this case is based make it clear that the action taken by the Council seeks to address a specific political situation and is clearly not intended to establish any legal precedent - especially not a precedent that would question the validity of time-honoured rules and principles of international law or the appropriateness of different domestic legislations with respect to the prevention and elimination of international terrorism.

We are convinced that the imposition of sanctions must always be linked to the performance of limited, concrete and very specific acts that are made mandatory by decisions of the Security Council. Such acts must be specifically set out by the Council so that the State on which sanctions are imposed may be able to know in advance, and beyond all doubt, that the sanctions will be lifted as soon as those specific requirements are met. This was the view we expressed, in connection with operative paragraph 16 of the



(Mr. Sardenberg, Brazil)

resolution, in the consultations undertaken by the sponsors, and it is the view we shall take when it comes to the practical application of that paragraph.

Since this is the first time Brazil is addressing this question in a formal meeting of the Security Council, we believe we should refer to our position in relation to the results of the investigations that provide the basis for the requests referred to in resolutions 731 (1992) and 748 (1992), as well as in the resolution we have just adopted. The Brazilian Government has studied carefully the documents submitted to the Security Council by the States that have conducted those investigations. As the Security Council cannot pass judgement on the merits of a criminal case, we understand that the action taken by the Council is aimed exclusively at addressing a political problem involving a threat to international peace and security. It cannot be construed in a manner inconsistent with the presumption of innocence.

We note that operative paragraphs 3, 5 and 6 of the resolution set forth decisions requiring measures by States to prohibit certain acts by their nationals or from their territory. It is the understanding of the Brazilian Government that the words "their nationals", in that context, are to be interpreted as meaning persons under their jurisdiction. It is clear that the decisions set out in those paragraphs do not require or authorize States to take any measures beyond their respective jurisdictions.

We understand that the initiatives that Member States are called upon to take to encourage the Libyan Government to respond effectively to Council resolutions, as expressed in operative paragraph 15, are initiatives such as those that have been carried out by States so far, in the manner of good offices, to facilitate

(Mr. Sardenberg, Brazil)

talks and diplomatic contacts leading to a peaceful solution of this problem.

I also wish to indicate that my delegation is fully aware of the need to address the consequences that may arise for third countries from the measures provided for in this resolution should the sanctions come into force. We therefore attach great importance to operative paragraph 10 of the resolution, which entrusts to the Committee established by resolution 748 (1992) the task of examining possible requests for assistance under Article 50 of the Charter. As a member of the Security Council and of that Committee, Brazil will be attentive to this problem and will be ready to work with other delegations to seek effective ways of dealing with this problem.

The question of ways and means of giving effect to the provisions of Article 50 goes well beyond this particular case. As there is an increasing number of cases in which sanctions are applied, there is also a proportionate need to examine ways in which the United Nations can ensure more effective application of Article 50.

Brazil voted in favour of this resolution in the hope that it will not be necessary for the sanctions to come into force. It is indeed our hope that the period between now and 1 December, when the new sanctions are to come into effect, will be profitably utilized by the States involved - in particular, by Libya - to achieve an early negotiated solution in full conformity with Security Council resolutions. We encourage the Secretary-General to continue his efforts to facilitate such a solution.

Mr. LI Zhaoxing (China) (interpretation from Chinese):

Peace is the common aspiration of people all over the world, and terrorist activities in any form are a great threat to people's peaceful lives. Since the tragic crashing of the Pan Am 103 and UTA 772 flights, the Chinese Government has on many occasions strongly condemned these terrorist acts and expressed its profound sympathy to the bereaved families and the victim countries. We have always held that comprehensive, fair and objective investigations should be conducted and that convicted criminals should be duly punished in accordance with the principles and provisions of the United Nations Charter and relevant international conventions.

(Mr. Li Zhoaxing, China)

The disputes between States, no matter how complicated they are, should be settled peacefully by diplomatic and political means. We are opposed to the indiscriminate imposition of sanctions on a country in the name of the United Nations. We made our position clear, when resolution 748 (1992) was adopted by the Council, that in principle China was not in favour of imposing sanctions on Libya. Under the current changing circumstances we are still not in favour of maintaining, let alone intensifying, sanctions against Libya. In our view, the only effective means that can lead to a solution of this question is negotiation and consultation. To intensify sanctions against Libya will not help to settle the question; on the contrary, it may further complicate the matter, make the Libyan people suffer more, and create even greater economic difficulties for the neighbouring and other countries concerned. Therefore, the Chinese delegation was unable to support the resolution adopted by the Council today.

Recently, the Libyan side has shown certain flexibility and is willing to encourage the suspects to appear before the Scottish courts. It has also expressed its intention to negotiate with the parties concerned to settle some specific issues. This positive gesture demonstrates that as long as the parties concerned show sincerity and are able to negotiate in a calm manner there will always be hope for a peaceful solution to the dispute.

Organizations such as the Organization of African Unity, the League of Arab States and the Movement of Non-Aligned Countries have also expressed their willingness to contribute to the settlement of the crisis that resulted from the above-mentioned air crashes, and they have already made unremitting efforts and achieved certain results. Therefore, more time should be given for their continuing efforts. We believe that these organizations,

(Mr. Li Zhoaxing, China)

with their more frequent contacts and exchanges with the party concerned, are in a better position to promote the settlement of this question and will be able to play a more positive role.

In order to bring an end to the crisis and ease the tension, the Secretary-General has overcome many difficulties and has been tireless in his mediating efforts. These efforts should also continue so as to help the parties concerned remove their differences and settle the remaining issues at an early date.

At the present stage, while recognizing the difficulties we are facing in solving the problems, we should also be aware of the existing opportunities. As long as we allow sufficient time for diplomatic efforts and have enough patience there is hope for a compromise acceptable to all, thus avoiding the imposition of upgraded sanctions and their adverse consequences. We therefore strongly urge the parties concerned to adopt an attitude of flexibility and compromise in order to create the necessary conditions for a final settlement.

Mr. VORONTSOV (Russian Federation) (interpretation from Russian): The Russian delegation supported the draft resolution adopted by the Council, which was sponsored by the United Kingdom, the United States and France, since it fully concurs with its reiteration of the resolve of the Security Council to eradicate international terrorism.

In combating this evil, which has become the real blight or leprosy of the twentieth century, there can be no vacillation. Combating international terrorism and violence is for us a key tenet deriving, not only from the moral underpinnings of the policy of a new Russia, but unfortunately from the realities of the contemporary world. We are therefore anxious to work and to cooperate with the world community in putting an end to acts of

(Mr. Vorontsov, Russian Federation)

international terrorism which, as appropriately emphasized in the resolution just adopted, is essential for the maintenance of international peace and security.

We are deeply convinced that Security Council resolutions 731 (1992) and 748 (1992), adopted with a view to bringing to justice those accused of planting an explosive device on board Pan Am flight 103 and UTA flight 772, must be implemented. The suspects must be brought to trial, and until that happens the sanctions mechanism should continue in effect.

As far as the nature of the sanctions is concerned, the Russian Federation attaches particular importance to that provision in the resolution which affirms:

"... that nothing in this resolution affects Libya's duty scrupulously to adhere to all of its obligations concerning servicing and repayment of its foreign debt;" (resolution 883 (1993), para. 11)

We believe that this is an extremely important provision, the purpose of which is to ensure that as a result of the additional sanctions imposed on Libya, the interests of other States would be harmed as little as possible.

We hope that Tripoli will treat the resolution we have adopted with all due seriousness, will draw the necessary conclusions, and shortly - it has until 1 December - take steps to comply with the legitimate demands of the Security Council. That will, initially, make it possible immediately to suspend the sanctions and then to consider the question of lifting them completely. It is our belief that that is in the interests of both Libya and the entire international community.

Mr. YAÑEZ BARNUEVO (Spain) (interpretation from Spanish):

The Security Council has just adopted a resolution which we had hoped would not have become necessary. Unfortunately, a year and a half after their adoption, resolutions 731 (1992) and 748 (1992) have still not been properly complied with. Despite the determined efforts of the Secretary-General, to whom we wish to express our special appreciation, and the efforts of States and organizations, particularly the League of Arab States, which are interested in a speedy solution of the crisis, we must note that Libya has not fully complied with the demands set forth in Security Council resolutions 731 (1992) and 748 (1992).

In those circumstances, the adoption of a new resolution was inevitable. First, it is necessary to ensure respect for the obligation imposed by the United Nations Charter on all Member States to comply with decisions of the Security Council. Secondly, the events that led to resolutions 731 (1992) and 748 (1992) are particularly serious. The attacks against commercial flights of Pan Am and UTA are horrendous crimes, which caused numerous innocent victims, and their presumed perpetrators must be brought to justice.

As the representative of Brazil has pointed out, the Security Council is taking action in order to deal with a decision that affects international peace and security, without prejudice to the principle of the presumption of innocence as regards the persons concerned. These are the reasons that prompted my delegation to vote in favour of resolution 883 (1993), which has just been adopted by the Council. This resolution, though as firm and vigorous as is necessary to attain its objective - namely to ensure compliance with the Council's requirements - nevertheless contains an element of flexibility providing an appropriate way out of the

(Mr. Yañez Barnuevo, Spain)

crisis if there is sufficient will on the part of the Libyan authorities to do so.

It is true that through this resolution new sanctions are imposed upon Libya, but it is also true that mechanisms are provided to suspend them and also to lift all the sanctions established immediately, once there is compliance with the requirements of the Council. Moreover, a time period is established which would make it possible to avoid the entry into force of the new measures if Libya fulfils its obligations by 1 December next.



(Mr. Yañez Barnuevo, Spain)

We would now encourage the Secretary-General to redouble his efforts, which were so close to bearing fruit, until it does so. We also encourage the States and organizations that can contribute to finding a solution to the crisis to lend the Secretary-General their cooperation.

At the same time, we would urge the Libyan Government to pursue the course set forth in its letters of 29 September and 1 October 1993. We were encouraged by the assurance given the Council today by the Permanent Representative of Libya that his Government will continue to cooperate with the Secretary-General in seeking a definitive solution to the problem.

To that end, the Libyan authorities must comply with the provisions of paragraph 16 of resolution 883 (1993), just adopted, and in particular must do everything necessary to ensure that the two persons charged with the bombing of Pan Am flight 103 do indeed appear before the Scottish courts, as well as to satisfy the requests of French judicial authorities with respect to the bombing of UTA flight 772.

In the unfortunate event that that does not take place by 1 December and the new measures therefore enter into force, the Council undertakes in the resolution just adopted to consider the economic problems that may confront States particularly affected by the implementation of those measures. Similarly, under the resolution the Council instructs the Committee established by resolution 748 (1992) to examine possible requests for assistance that may be submitted by such States under the provisions of Article 50 of the Charter and to make recommendations to the President of the Security Council for appropriate action. The Council thus continues a practice followed in other cases in which

(Mr. Yañez Barnuevo, Spain)

enforcement measures were adopted that could have a negative effect on the economies of Member States, a practice that will undoubtedly facilitate cooperation by those States in implementing such measures and that my country wholeheartedly supports.

Spain sincerely hopes that we will not reach that point. We hope that Libya will comply with the Council's requirements, thereby resolving a crisis that is causing considerable harm not only to the Libyan people but to other peoples, including my own, in the Mediterranean region, which is not exempt from problems that need to be approached through international cooperation in a North-South context. Some very hopeful initiatives that have been launched in recent years have been affected by this crisis. We would hope that the situation will be resolved as soon as possible for the sake of the full development of that much-needed cooperation between the two shores of the Mediterranean for the benefit of their peoples and of the international community.

Mr. ERDÖS (Hungary) (interpretation from French): Hungary vigorously and unreservedly condemns all forms of international terrorism. We are deeply convinced that the international community must do everything, within the framework of global and regional cooperation, to combat and eradicate that serious phenomenon, which knows no borders. This position of principle determines Hungary's attitude towards the problem with which we are dealing today: the terrorist acts perpetrated against the Pan Am and UTA flights. We regret that, because of delaying tactics and unkept promises and the growing gap between verbal statements and concrete actions, this item is still on the Council's agenda. We regret that for the third time the Council has had to meet to review the situation. The reason for this is Libya's failure, despite persistent efforts by the Secretary-

(Mr. Erdős, Hungary)

General, the countries members of the Arab League, and other States concerned, to comply with Security Council resolutions 731 (1992) and 748 (1992), adopted, respectively, in January and March last year.

It is clear that the Council had no choice but to adopt new measures to ensure respect for its two earlier resolutions. At the same time, as in other similar cases, we cannot conceal our regret that we have had to have recourse to Chapter VII of the Charter to tighten the sanctions imposed on a Member State of the Organization, particularly since that State is a country with which Hungary has long had mutually advantageous economic cooperation.

We would hope that the Libyan Government will make use of the period between now and 1 December, the date on which the resolution we have just adopted will enter into force, to comply with the relevant Security Council resolutions, which might make it unnecessary to implement today's resolution. We should also like to draw attention to paragraph 16 of the resolution, under which the Council expresses its readiness to review the sanction measures with a view to suspending and, possibly, lifting them. We are confident that Libya will make use of all available possibilities to extricate itself from the present situation and thereby enable the Security Council to determine that the circumstances that caused the imposition of such measures against that country have ceased to exist.

In that spirit, and for those reasons, Hungary decided to vote in favour of resolution 883 (1993), in the hope that the day is not too far off when it will be possible to restore normal relations with Libya in every sphere.

Mr. TAYLHARDAT (Venezuela) (interpretation from Spanish):

Venezuela condemns terrorism in all its forms, regardless of its sponsors or the causes that are alleged to justify it, be they political, economic, social, religious or of any other kind. That is a position my country has consistently upheld in all international forums.

Accordingly, we have supported international measures and initiatives aimed at combating and eradicating that hateful form of struggle. Terrorism is a cowardly act, one that cloaks itself in anonymity, sacrifices human life and wreaks destruction to achieve its goals, with total contempt for the most basic individual rights.

As is pointed out in General Assembly resolution 44/29, acts of international terrorism not only result in irreparable loss of human life and in material damage but also have a deleterious effect on international relations because of the harm they do to international peace and security. This is reflected in the resolution we have just adopted, which has its roots in deplorable acts of terrorism whose scope has led the international community, represented in the Security Council, to adopt measures to ensure that those charged with such abominable actions are brought to justice and punished to the full extent of the law.

My delegation would have preferred that the situation referred to in the resolution just adopted be resolved without the need to resort to the application of such severe measures as those set forth in it.

Venezuela was heartened when, as noted in the seventh preambular paragraph of resolution 883 (1993), the Government of Libya stated its intention to encourage those charged with the bombing of Pan Am flight 103 to appear for trial and its willingness to cooperate with the French authorities in elucidating the case of the bombing of UTA flight 772.

(Mr. Taylhardat, Venezuela)

Unfortunately, those charged did not appear. This fact, together with the lack of a full and effective response to the requests and decisions contained in Security Council resolutions 731 (1992) and 748 (1992), has led the Council to adopt today's resolution, which provides for new and more drastic measures. The purpose of these measures is to demonstrate the international community's firm resolve to punish those guilty of committing acts of terrorism.

In voting in favour of resolution 883 (1993), my delegation hopes and trusts that the alleged perpetrators of these acts will appear before the competent court before the expiration of the deadline set for the entry into force of the measures provided for in the resolution.

We appeal to all the parties involved in this problem to continue to demonstrate the spirit of compromise they have shown so far in the quest for a solution in harmony with the spirit and purpose of the various resolutions adopted by the Council on this subject.

In conclusion, we express to the Secretary-General our gratitude for the important role he has played in regard to this problem. We believe that he has not yet exhausted all his possibilities for action and we trust that he will continue to exert efforts to secure the cooperation of the Libyan Arab Jamahiriya in the quest for a solution that will render unnecessary the implementation of the measures provided for in this resolution and lead to the lifting of the measures imposed by previous resolutions of the Council.

Mr. MARUYAMA (Japan): Since last year, many Governments and organizations, including the League of Arab States, as well as the Secretary-General of the United Nations, have been trying to

(Mr. Maruyama, Japan)

gain the cooperation of Libya in an effort to clarify the facts surrounding the downing of Pan Am flight 103 and UTA flight 772, among whose victims was a Japanese national.

Japan, which is strongly opposed to terrorism in all its forms, has appealed repeatedly to the Libyan Government to comply with Security Council resolutions 731 (1992) and 748 (1992). It is indeed regrettable that, despite such endeavours, Libya has failed to comply with the Security Council's requirements and has continuously tried to avoid its international obligations through equivocation and delay.

Last year, at the time that resolutions 731 (1992) and 748 (1992) were adopted, it was understood that the Security Council would be compelled to take further measures if Libya did not comply with them. Now, unfortunately, the Council has had no choice but to adopt further measures to gain Libya's compliance.

Japan urges the Libyan Government to comply fully with the relevant Security Council resolutions without further delay. It is in the hope of gaining this compliance that my delegation supported the adoption of this new resolution. In the meantime, Japan remains committed to efforts to find a solution to this difficult situation and, indeed, to eliminate all forms of international terrorism.

Mr. MARKER (Pakistan): Pakistan has consistently and vigorously condemned terrorism in all its forms and manifestations. This includes the abominable acts perpetrated against Pan Am flight 103 and UTA flight 772.

Pakistan has always also upheld the sanctity of the resolutions of the General Assembly and the Security Council and has consistently supported complete and faithful adherence to them.

(Mr. Marker, Pakistan)

We have therefore scrupulously abided by the terms of Security Council resolution 748 (1992).

We regret that the sincere and dedicated efforts that were undertaken by the Secretary-General of the United Nations and a number of well-intentioned Governments to find an amicable solution to the problem of meeting the requirements of Security Council resolution 731 (1992) appear to have been unsuccessful. However, we have not lost hope and feel that these endeavours should continue.

The PRESIDENT: There are no further names on the list of speakers. The Security Council has thus concluded the present stage of its consideration of the item on its agenda.

The meeting rose at 4.45 p.m.

Exhibit 34

Resolution 286, United Nations Security Council,  
1552nd meeting, 9 September 1970





**RESOLUTIONS AND DECISIONS  
OF THE SECURITY COUNCIL  
1970**

**SECURITY COUNCIL**

**OFFICIAL RECORDS : TWENTY-FIFTH YEAR**

**UNITED NATIONS**

**New York, 1971**

Resolution (286) (1970)

of 9 September 1970

*The Security Council,*

*Gravely concerned* at the threat to innocent civilian lives from the hijacking of aircraft and any other interference in international travel,

1. *Appeals* to all parties concerned for the immediate release of all passengers and crews without exception, held as a result of hijackings and other interference in international travel;

2. *Calls on* States to take all possible legal steps to prevent further hijackings or any other interference with international civil air travel.

*Adopted at the 1552nd meeting.<sup>49</sup>*

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<sup>49</sup> Adopted without vote.

Exhibit 35

Note by the President of the Security Council  
(United Nations Document S/17554; 9 October 1985)



**Security Council**

Distr.  
GENERAL

S/17554  
9 October 1985

ORIGINAL: ENGLISH

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NOTE BY THE PRESIDENT OF THE SECURITY COUNCIL

At the 2618th meeting of the Security Council, on 9 October 1985, the President made the following statement on behalf of the members of the Council:

"The members of the Security Council welcome the news of the release of the passengers and the crew of the cruise ship Achille Lauro and deplore the reported death of a passenger.

"They endorse the Secretary-General's statement of 8 October 1985, which condemns all acts of terrorism.

"They resolutely condemn this unjustifiable and criminal hijacking as well as other acts of terrorism, including hostage-taking.

"They also condemn terrorism in all its forms, wherever and by whomever committed."

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Exhibit 36

Resolution 579, United Nations Security Council,  
2637th meeting, 18 December 1985



**RESOLUTIONS AND DECISIONS  
OF THE SECURITY COUNCIL  
1985**

**SECURITY COUNCIL**

**OFFICIAL RECORDS: FORTIETH YEAR**

**UNITED NATIONS**

**New York, 1986**

STATEMENT BY THE PRESIDENT

LETTER DATED 16 DECEMBER 1985 FROM THE PERMANENT REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

Decision

At its 2637th meeting, on 18 December 1985, the Council proceeded with the discussion of the item entitled "Letter dated 16 December 1985 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council (S/17685)".<sup>100</sup>

<sup>100</sup> *Ibid.*

Resolution 579 (1985) ✓

of 18 December 1985

*The Security Council,*

*Deeply disturbed* at the prevalence of incidents of hostage-taking and abduction, several of which are of protracted duration and have included loss of life,

*Considering* that the taking of hostages and abductions are offences of grave concern to the international community, having severe adverse consequences for the rights of the victims and for the promotion of friendly relations and co-operation among States,

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*Recalling* the statement of 9 October 1985 by the President of the Security Council, resolutely condemning all acts of terrorism, including hostage-taking,<sup>101</sup>

*Recalling also* resolution 40/61 of 9 December 1985 of the General Assembly,

*Bearing in mind* the International Convention against the Taking of Hostages, adopted on 17 December 1979,<sup>102</sup> the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted on 14 December 1973,<sup>103</sup> the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed on 23 September 1971,<sup>104</sup> the Convention for the Suppression of Unlawful Seizure of Aircraft, signed on 16 December 1970,<sup>105</sup> and other relevant conventions,

1. *Condemns unequivocally* all acts of hostage-taking and abduction;

2. *Calls for* the immediate safe release of all

<sup>101</sup> See p. 24, Statement by the President.

<sup>102</sup> General Assembly resolution 34/146, annex.

<sup>103</sup> General Assembly resolution 3166 (XXVIII), annex.

<sup>104</sup> United Nations, *Treaty Series*, vol. 974, No. 14118, p. 178.

<sup>105</sup> United Nations, *Treaty Series*, vol. 860, No. 12325, p. 105.

hostages and abducted persons wherever and by whom-ever they are being held;

3. *Affirms* the obligation of all States in whose territory hostages or abducted persons are held urgently to take all appropriate measures to secure their safe release and to prevent the commission of acts of hostage-taking and abduction in the future;

4. *Appeals* to all States that have not yet done so to consider the possibility of becoming parties to the International Convention against the Taking of Hostages, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, the Convention for the Suppression of Unlawful Seizure of Aircraft and other relevant conventions;

5. *Urges* the further development of international co-operation among States in devising and adopting effective measures which are in accordance with the rules of international law to facilitate the prevention, prosecution and punishment of all acts of hostage-taking and abduction as manifestations of international terrorism.

*Adopted unanimously at the 2637th meeting.*

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Exhibit 37

Resolution 635, United Nations Security Council,  
2869th meeting, 14 June 1989







**RESOLUTIONS AND DECISIONS  
OF THE SECURITY COUNCIL  
1989**

**SECURITY COUNCIL**

**OFFICIAL RECORDS: FORTY-FOURTH YEAR**

**UNITED NATIONS**

New York, 1990

## MARKING OF PLASTIC OR SHEET EXPLOSIVES FOR THE PURPOSE OF DETECTION

### Decision

At its 2869th meeting, on 14 June 1989, the Council discussed the item entitled "Marking of plastic or sheet explosives for the purpose of detection".

Resolution 635 (1989) ✓  
of 14 June 1989

*The Security Council,*

*Conscious of the implications of acts of terrorism for international security,*

*Deeply concerned by all acts of unlawful interference against international civil aviation,*

*Mindful of the important role of the United Nations in supporting and encouraging efforts by all States and intergovernmental organizations in preventing and eliminating all acts of terrorism, including those involving the use of explosives,*

*Determined to encourage the promotion of effective measures to prevent acts of terrorism,*

*Concerned about the ease with which plastic or sheet explosives can be used in acts of terrorism with little risk of detection,*

*Taking note of the International Civil Aviation Organization Council resolution of 16 February 1989, in which it urged its member States to expedite current research and development on detection of explosives and on security equipment,*

1. *Condemns* all acts of unlawful interference against the security of civil aviation;

2. *Calls upon* all States to co-operate in devising and implementing measures to prevent all acts of terrorism, including those involving explosives;

3. *Welcomes* the work already undertaken by the International Civil Aviation Organization, and by other international organizations, aimed at preventing and eliminating all acts of terrorism, in particular in the field of aviation security;

4. *Urges* the International Civil Aviation Organization to intensify its work aimed at preventing all acts of terrorism against international civil aviation, and in particular its work on devising an international régime for the marking of plastic or sheet explosives for the purpose of detection;

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5. *Urges* all States, and in particular the producers of plastic or sheet explosives, to intensify research into means of making such explosives more easily detectable, and to co-operate in this endeavour;

6. *Calls upon* all States to share the results of such research and co-operation with a view to devising, in the

International Civil Aviation Organization and other competent international organizations, an international régime for the marking of plastic or sheet explosives for the purpose of detection.

*Adopted unanimously at the 2869th meeting.*

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Exhibit 38

Resolution 687, United Nations Security Council,  
2981st meeting, 3 April 1991



**RESOLUTIONS AND DECISIONS  
OF THE SECURITY COUNCIL  
1991**

**SECURITY COUNCIL  
OFFICIAL RECORDS: FORTY-SIXTH YEAR**

**UNITED NATIONS  
New York, 1993**

*The Security Council,*

*Recalling* its resolutions 660 (1990) of 2 August 1990, 661 (1990) of 6 August 1990, 662 (1990) of 9 August 1990, 664 (1990) of 18 August 1990, 665 (1990) of 25 August 1990, 666 (1990) of 13 September 1990, 667 (1990) of 16 September 1990, 669 (1990) of 24 September 1990, 670 (1990) of 25 September 1990, 674 (1990) of 29 October 1990, 677 (1990) of 28 November 1990, 678 (1990) of 29 November 1990 and 686 (1991) of 2 March 1991,

*Welcoming* the restoration to Kuwait of its sovereignty, independence and territorial integrity and the return of its legitimate Government,

*Affirming* the commitment of all Member States to the sovereignty, territorial integrity and political independence of Kuwait and Iraq, and noting the intention expressed by the Member States cooperating with Kuwait under paragraph 2 of resolution 678 (1990) to bring their military presence in Iraq to an end as soon as possible consistent with paragraph 8 of resolution 686 (1991),

*Reaffirming* the need to be assured of Iraq's peaceful intentions in the light of its unlawful invasion and occupation of Kuwait,

*Taking note* of the letter dated 27 February 1991 from the Deputy Prime Minister and Minister for Foreign Affairs of Iraq addressed to the President of the Security Council<sup>44</sup> and of his letters of the same date addressed to the President of the Council and to the Secretary-General,<sup>45</sup> and those letters dated 3 March<sup>46</sup> and 5 March<sup>47</sup> he addressed to them, pursuant to resolution 686 (1991),

*Noting* that Iraq and Kuwait, as independent sovereign States, signed at Baghdad on 4 October 1963 "Agreed Minutes between the State of Kuwait and the Republic of Iraq regarding the restoration of friendly relations, recognition and related matters",<sup>48</sup> thereby formally recognizing the boundary between Iraq and Kuwait and the allocation of islands, which Agreed Minutes were registered with the United Nations in accordance with Article 102 of the Charter of the United Nations and in which Iraq recognized the independence and complete sovereignty of the State of Kuwait with its boundaries as specified in the letter of the Prime Minister of Iraq dated 21 July 1932 and as accepted by the ruler of Kuwait in his letter dated 10 August 1932,

*Conscious* of the need for demarcation of the said boundary,

*Conscious also* of the statements by Iraq threatening to use weapons in violation of its obligations under the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925,<sup>49</sup> and of its prior use of chemical weapons, and affirming that grave consequences would follow any further use by Iraq of such weapons,

*Recalling* that Iraq has subscribed to the Final Declaration adopted by all States participating in the Conference of States Parties to the 1925 Geneva Protocol and Other Interested States, held in Paris from 7 to 11 January 1989,<sup>50</sup> establishing the objective of universal elimination of chemical and biological weapons,

*Recalling also* that Iraq has signed the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, of 10 April 1972,<sup>61</sup>

*Noting* the importance of Iraq ratifying the Convention,

*Noting also* the importance of all States adhering to the Convention and encouraging its forthcoming review conference to reinforce the authority, efficiency and universal scope of the Convention,

*Stressing the importance* of an early conclusion by the Conference on Disarmament of its work on a convention on the universal prohibition of chemical weapons and of universal adherence thereto,

*Aware* of the use by Iraq of ballistic missiles in unprovoked attacks and therefore of the need to take specific measures in regard to such missiles located in Iraq,

*Concerned* by the reports in the hands of Member States that Iraq has attempted to acquire materials for a nuclear-weapons programme contrary to its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968,<sup>62</sup>

*Recalling* the objective of the establishment of a nuclear-weapon-free zone in the region of the Middle East,

*Conscious* of the threat that all weapons of mass destruction pose to peace and security in the area and of the need to work towards the establishment in the Middle East of a zone free of such weapons,

*Conscious also* of the objective of achieving balanced and comprehensive control of armaments in the region,

*Conscious further* of the importance of achieving the objectives noted above using all available means, including a dialogue among the States of the region,

*Noting* that resolution 686 (1991) marked the lifting of the measures imposed by resolution 661 (1990) in so far as they applied to Kuwait,

*Noting also* that despite the progress being made in fulfilling the obligations of resolution 686 (1991), many Kuwaiti and third-State nationals are still not accounted for and property remains unreturned,

*Recalling* the International Convention against the Taking of Hostages,<sup>63</sup> opened for signature in New York on 18 December 1979, which categorizes all acts of taking hostages as manifestations of international terrorism,

*Deploring* threats made by Iraq during the recent conflict to make use of terrorism against targets outside Iraq and the taking of hostages by Iraq,

*Taking note with grave concern* of the reports transmitted by the Secretary-General on 20 March <sup>53</sup> and 28 March 1991,<sup>64</sup> and conscious of the necessity to meet urgently the humanitarian needs in Kuwait and Iraq,

*Bearing in mind* its objective of restoring international peace and security in the area as set out in its recent resolutions,

*Conscious* of the need to take the following measures acting under Chapter VII of the Charter,

1. *Affirms* all thirteen resolutions noted above, except as expressly changed below to achieve the goals of the present resolution, including a formal cease-fire;

#### A

2. *Demands* that Iraq and Kuwait respect the inviolability of the international boundary and the allocation of islands set out in the "Agreed Minutes between the State of Kuwait and the Republic of Iraq regarding the restoration of friendly relations, recognition and related matters",<sup>58</sup> signed by them in the exercise of their sovereignty at Baghdad on 4 October 1963 and registered with the United Nations;

3. *Calls upon* the Secretary-General to lend his assistance to make arrangements with Iraq and Kuwait to demarcate the boundary between Iraq and Kuwait, drawing on appropriate material including the maps transmitted with the letter dated 28 March 1991 addressed to him by the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations,<sup>65</sup> and to report back to the Council within one month;

4. *Decides* to guarantee the inviolability of the above-mentioned international boundary and to take, as appropriate, all necessary measures to that end in accordance with the Charter of the United Nations;

#### B

5. *Requests* the Secretary-General, after consulting with Iraq and Kuwait, to submit within three days to the Council for its approval a plan for the immediate deployment of a United Nations observer unit to monitor the Khawr 'Abd Allah and a demilitarized zone, which is hereby established, extending ten kilometres into Iraq and five kilometres into Kuwait from the boundary referred to in the "Agreed Minutes between the State of Kuwait and the Republic of Iraq regarding the restoration of friendly relations, recognition and related matters"; to deter violations of the boundary through its presence in and surveillance of the demilitarized zone and to observe any hostile or potentially hostile action mounted from the territory of one State against the other; and also requests the Secretary-General to report regularly to the Council on the operations of the unit and to do so immediately if there are serious violations of the zone or potential threats to peace;

6. *Notes* that as soon as the Secretary-General notifies the Council of the completion of the deployment of the United Nations observer unit, the conditions will be established for the Member States cooperating with Kuwait in accordance with resolution 678 (1990) to bring their military presence in Iraq to an end consistent with resolution 686 (1991);

C

7. *Invites* Iraq to reaffirm unconditionally its obligations under the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925,<sup>59</sup> and to ratify the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, of 10 April 1972;<sup>61</sup>

8. *Decides* that Iraq shall unconditionally accept the destruction, removal, or rendering harmless, under international supervision, of:

(a) All chemical and biological weapons and all stocks of agents and all related subsystems and components and all research, development, support and manufacturing facilities related thereto;

(b) All ballistic missiles with a range greater than one hundred and fifty kilometres, and related major parts and repair and production facilities;

9. *Decides also*, for the implementation of paragraph 8, the following:

(a) Iraq shall submit to the Secretary-General, within fifteen days of the adoption of the present resolution, a declaration on the locations, amounts and types of all items specified in paragraph 8 and agree to urgent, on-site inspection as specified below;

(b) The Secretary-General, in consultation with the appropriate Governments and, where appropriate, with the Director-General of the World Health Organization, within forty-five days of the adoption of the present resolution shall develop and submit to the Council for approval a plan calling for the completion of the following acts within forty-five days of such approval:

- (i) The forming of a special commission which shall carry out immediate on-site inspection of Iraq's biological, chemical and missile capabilities, based on Iraq's declarations and the designation of any additional locations by the special commission itself;
- (ii) The yielding by Iraq of possession to the Special Commission for destruction, removal or rendering harmless, taking into account the requirements of public safety, of all items specified under paragraph 8 (a), including items at the

additional locations designated by the Special Commission under paragraph (i) and the destruction by Iraq, under the supervision of the Special Commission, of all its missile capabilities, including launchers, as specified under paragraph 8 (b);

- (iii) The provision by the Special Commission to the Director General of the International Atomic Energy Agency of the assistance and cooperation required in paragraphs 12 and 13;

10. *Decides further* that Iraq shall unconditionally undertake not to use, develop, construct or acquire any of the items specified in paragraphs 8 and 9, and requests the Secretary-General, in consultation with the Special Commission, to develop a plan for the future ongoing monitoring and verification of Iraq's compliance with the present paragraph, to be submitted to the Council for approval within one hundred and twenty days of the passage of the present resolution;

11. *Invites* Iraq to reaffirm unconditionally its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons, of 1 July 1968;<sup>62</sup>

12. *Decides* that Iraq shall unconditionally agree not to acquire or develop nuclear weapons or nuclear-weapon-usable material or any subsystems or components or any research, development, support or manufacturing facilities related to the above; to submit to the Secretary-General and the Director General of the International Atomic Energy Agency within fifteen days of the adoption of the present resolution a declaration of the locations, amounts and types of all items specified above; to place all of its nuclear-weapon-usable materials under the exclusive control, for custody and removal, of the Agency, with the assistance and cooperation of the Special Commission as provided for in the plan of the Secretary-General discussed in paragraph 9 (b); to accept, in accordance with the arrangements provided for in paragraph 13, urgent on-site inspection and the destruction, removal or rendering harmless as appropriate of all items specified above; and to accept the plan discussed in paragraph 13 for the future ongoing monitoring and verification of its compliance with these undertakings;

13. *Requests* the Director General of the International Atomic Energy Agency, through the Secretary-General and with the assistance and cooperation of the Special Commission as provided for in the plan of the Secretary-General referred to in paragraph 9 (b), to carry out immediate on-site inspection of Iraq's nuclear capabilities based on Iraq's declarations and the designation of any additional locations by the Special Commission; to develop a plan for submission to the Council within forty-five days calling for the destruction, removal or rendering harmless as appropriate of all items listed in paragraph 12; to carry out the plan within forty-five days following approval by the Council and to develop a plan, taking into account the rights and obligations of Iraq under the Treaty on the Non-Proliferation of Nuclear Weapons, for the future ongoing monitoring and verification of Iraq's compliance with paragraph 12, including an inventory of all nuclear material in Iraq subject to the Agency's verification and inspections to confirm that



Agency safeguards cover all relevant nuclear activities in Iraq, to be submitted to the Council for approval within one hundred and twenty days of the adoption of the present resolution;

14. *Notes* that the actions to be taken by Iraq in paragraphs 8 to 13 represent steps towards the goal of establishing in the Middle East a zone free from weapons of mass destruction and all missiles for their delivery and the objective of a global ban on chemical weapons;

*D*

15. *Requests* the Secretary-General to report to the Council on the steps taken to facilitate the return of all Kuwaiti property seized by Iraq, including a list of any property that Kuwait claims has not been returned or which has not been returned intact;

*E*

16. *Reaffirms* that Iraq, without prejudice to its debts and obligations arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss, damage - including environmental damage and the depletion of natural resources - or injury to foreign Governments, nationals and corporations as a result of its unlawful invasion and occupation of Kuwait;

17. *Decides* that all Iraqi statements made since 2 August 1990 repudiating its foreign debt are null and void, and demands that Iraq adhere scrupulously to all of its obligations concerning servicing and repayment of its foreign debt;

18. *Decides also* to create a fund to pay compensation for claims that fall within paragraph 16 and to establish a commission that will administer the fund;

19. *Directs* the Secretary-General to develop and present to the Council for decision, no later than thirty days following the adoption of the present resolution, recommendations for the Fund to be established in accordance with paragraph 18 and for a programme to implement the decisions in paragraphs 16 to 18, including the following: administration of the Fund; mechanisms for determining the appropriate level of Iraq's contribution to the Fund, based on a percentage of the value of its exports of petroleum and petroleum products, not to exceed a figure to be suggested to the Council by the Secretary-General, taking into account the requirements of the people of Iraq, Iraq's payment capacity as assessed in conjunction with the international financial institutions taking into consideration external debt service, and the needs of the Iraqi economy; arrangements for ensuring that payments are made to the Fund; the process by which funds will be allocated and claims paid; appropriate procedures for evaluating losses, listing claims and verifying their validity, and resolving disputed claims in respect of Iraq's liability as specified in paragraph 16; and the composition of the Commission designated above;

*F*

20. *Decides*, effective immediately, that the prohibitions against the sale or supply to Iraq of commodities or products other than medicine and health supplies, and prohibitions against financial transactions related thereto contained in resolution 661 (1990), shall not apply to foodstuffs notified to the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait or, with the approval of that Committee, under the simplified and accelerated "no-objection" procedure, to materials and supplies for essential civilian needs as identified in the report to the Secretary-General dated 20 March 1991,<sup>33</sup> and in any further findings of humanitarian need by the Committee;

21. *Decides* to review the provisions of paragraph 20 every sixty days in the light of the policies and practices of the Government of Iraq, including the implementation of all relevant resolutions of the Council, for the purpose of determining whether to reduce or lift the prohibitions referred to therein;

22. *Decides also* that upon the approval by the Council of the programme called for in paragraph 19 and upon Council agreement that Iraq has completed all actions contemplated in paragraphs 8 to 13, the prohibitions against the import of commodities and products originating in Iraq and the prohibitions against financial transactions related thereto contained in resolution 661 (1990) shall have no further force or effect;

23. *Decides further* that, pending action by the Council under paragraph 22, the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait shall be empowered to approve, when required to assure adequate financial resources on the part of Iraq to carry out the activities under paragraph 20, exceptions to the prohibition against the import of commodities and products originating in Iraq;

24. *Decides* that, in accordance with resolution 661 (1990) and subsequent related resolutions and until it takes a further decision, all States shall continue to prevent the sale or supply to Iraq, or the promotion or facilitation of such sale or supply, by their nationals or from their territories or using their flag vessels or aircraft, of:

(a) Arms and related *matériel* of all types, specifically including the sale or transfer through other means of all forms of conventional military equipment, including for paramilitary forces, and spare parts and components and their means of production for such equipment;

(b) Items specified and defined in paragraphs 8 and 12 not otherwise covered above;

(c) Technology under licensing or other transfer arrangements used in the production, utilization or stockpiling of items specified in paragraphs (a) and (b);

(d) Personnel or materials for training or technical support services relating to the design, development, manufacture, use, maintenance or support of items specified in paragraphs (a) and (b);

25. *Calls upon* all States and international organizations to act strictly in accordance with paragraph 24, notwithstanding the existence of any contracts, agreements, licences or any other arrangements;

26. *Requests* the Secretary-General, in consultation with appropriate Governments, to develop within sixty days, for the approval of the Council, guidelines to facilitate full international implementation of paragraphs 24, 25 and 27, and to make them available to all States and to establish a procedure for updating these guidelines periodically;

27. *Calls upon* all States to maintain such national controls and procedures and to take such other actions consistent with the guidelines to be established by the Council under paragraph 26 as may be necessary to ensure compliance with the terms of paragraph 24, and calls upon international organizations to take all appropriate steps to assist in ensuring such full compliance;

28. *Agrees* to review its decisions in paragraphs 22 to 25, except for the items specified and defined in paragraphs 8 and 12, on a regular basis and in any case one hundred and twenty days following the adoption of the present resolution, taking into account Iraq's compliance with the resolution and general progress towards the control of armaments in the region;

29. *Decides* that all States, including Iraq, shall take the necessary measures to ensure that no claim shall lie at the instance of the Government of Iraq, or of any person or body in Iraq, or of any person claiming through or for the benefit of any such person or body, in connection with any contract or other transaction where its performance was affected by reason of the measures taken by the Council in resolution 661 (1990) and related resolutions;

#### G

30. *Decides* that, in furtherance of its commitment to facilitate the repatriation of all Kuwaiti and third-State nationals, Iraq shall extend all necessary cooperation to the International Committee of the Red Cross by providing lists of such persons, facilitating the access of the International Committee to all such persons wherever located or detained and facilitating the search by the International Committee for those Kuwaiti and third-State nationals still unaccounted for;

31. *Invites* the International Committee of the Red Cross to keep the Secretary-General apprised, as appropriate, of all activities undertaken in connection with facilitating the repatriation or return of all Kuwaiti and third-State nationals or their remains present in Iraq on or after 2 August 1990;

#### H

32. *Requires* Iraq to inform the Council that it will not commit or support any act of international terrorism or allow any organization directed towards commission of such acts to operate within its territory and to condemn unequivocally and renounce all acts, methods and practices of terrorism;

#### I

33. *Declares* that, upon official notification by Iraq to the Secretary-General and to the Security Council of its acceptance of the above provisions, a formal cease-fire is effective between Iraq and Kuwait and the Member States cooperating with Kuwait in accordance with resolution 678 (1990);

34. *Decides* to remain seized of the matter and to take such further steps as may be required for the implementation of the present resolution and to secure peace and security in the region.

*Adopted at the 2981st meeting by 12 votes to 1 (Cuba) with 2 abstentions (Ecuador, Yemen).*

#### Decision

At its 2983rd meeting, on 9 April 1991, the Council decided to invite the representatives of Iraq and Kuwait to participate, without vote, in the discussion of the item entitled "The situation between Iraq and Kuwait: report of the Secretary-General on the implementation of paragraph 5 of Security Council resolution 687 (1991) (S/22454 and Add.1-3)".<sup>7</sup>

Exhibit 39

Note by the President of the Security Council  
(United Nations Document S/23500; 31 January 1992)



Security Council

Distr.  
GENERAL

S/23500  
31 January 1992

ORIGINAL: ENGLISH

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NOTE BY THE PRESIDENT OF THE SECURITY COUNCIL

At the conclusion of the 3046th meeting of the Security Council, held at the level of Heads of State and Government on 31 January 1992 in connection with the item entitled "The responsibility of the Security Council in the maintenance of international peace and security", the President of the Security Council made the following statement on behalf of the members of the Council.

"The members of the Security Council have authorized me to make the following statement on their behalf.

"The Security Council met at the Headquarters of the United Nations in New York on 31 January 1992, for the first time at the level of Heads of State and Government. The members of the Council considered, within the framework of their commitment to the United Nations Charter, 'The responsibility of the Security Council in the maintenance of international peace and security'. 1/

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1/ The meeting was chaired by the Prime Minister of the United Kingdom of Great Britain and Northern Ireland as the President of the Security Council for January. Statements were made by His Excellency Dr. Franz Vranitzky, Federal Chancellor of Austria, His Excellency Mr. Wilfried Martens, Prime Minister of Belgium, His Excellency Dr. Carlos Alberto Wahnou de Carvalho Veiga, Prime Minister of Cape Verde, His Excellency Mr. Li Peng, Premier of the State Council of China, His Excellency Dr. Rodrigo Borja-Cevallos, Constitutional President of Ecuador, His Excellency Mr. François Mitterrand, President of France, His Excellency Dr. Géza Jeszenszky, Minister for Foreign Affairs and Personal Emissary of the Prime Minister of Hungary, His Excellency Mr. P. V. Narasimha Rao, Prime Minister of India, His Excellency Mr. Kiichi Miyazawa, Prime Minister of Japan, His Majesty Hassan II, King of Morocco, His Excellency Mr. Boris N. Yeltsin, President of the Russian Federation, His Excellency the Rt. Hon. John Major MP, Prime Minister of the United Kingdom of Great Britain and Northern Ireland, His Excellency Mr. George Bush, President of the United States of America, His Excellency Dr. Carlos Andrés Pérez, President of Venezuela and His Excellency Dr. Nathan Shamuyarira, Minister of Foreign Affairs and Personal Emissary of the President of Zimbabwe, as well as by the Secretary-General, His Excellency Dr. Boutros Boutros-Ghali.

"The members of the Security Council consider that their meeting is a timely recognition of the fact that there are new favourable international circumstances under which the Security Council has begun to fulfil more effectively its primary responsibility for the maintenance of international peace and security.

"A time of change

"This meeting takes place at a time of momentous change. The ending of the Cold War has raised hopes for a safer, more equitable and more humane world. Rapid progress has been made, in many regions of the world, towards democracy and responsive forms of government, as well as towards achieving the Purposes set out in the Charter. The completion of the dismantling of apartheid in South Africa would constitute a major contribution to these Purposes and positive trends, including to the encouragement of respect for human rights and fundamental freedoms.

"Last year, under the authority of the United Nations, the international community succeeded in enabling Kuwait to regain its sovereignty and territorial integrity, which it had lost as a result of Iraqi aggression. The resolutions adopted by the Security Council remain essential to the restoration of peace and stability in the region and must be fully implemented. At the same time the members of the Council are concerned by the humanitarian situation of the innocent civilian population of Iraq.

"The members of the Council support the Middle East peace process, facilitated by the Russian Federation and the United States, and hope that it will be brought to a successful conclusion on the basis of Council resolutions 242 (1967) and 338 (1973).

"They welcome the role the United Nations has been able to play under the Charter in progress towards settling long-standing regional disputes, and will work for further progress towards their resolution. They applaud the valuable contribution being made by United Nations peace-keeping forces now operating in Asia, Africa, Latin America and Europe.

"The members of the Council note that United Nations peace-keeping tasks have increased and broadened considerably in recent years. Election monitoring, human rights verification and the repatriation of refugees have in the settlement of some regional conflicts, at the request or with the agreement of the parties concerned, been integral parts of the Security Council's effort to maintain international peace and security. They welcome these developments.

"The members of the Council also recognize that change, however welcome, has brought new risks for stability and security. Some of the most acute problems result from changes to State structures. The members of the Council will encourage all efforts to help achieve peace, stability and cooperation during these changes.

"The international community therefore faces new challenges in the search for peace. All Member States expect the United Nations to play a central role at this crucial stage. The members of the Council stress the importance of strengthening and improving the United Nations to increase its effectiveness. They are determined to assume fully their responsibilities within the United Nations Organization in the framework of the Charter.

"The absence of war and military conflicts amongst States does not in itself ensure international peace and security. The non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security. The United Nations membership as a whole, working through the appropriate bodies, needs to give the highest priority to the solution of these matters.

#### "Commitment to collective security

"The members of the Council pledge their commitment to international law and to the United Nations Charter. All disputes between States should be peacefully resolved in accordance with the provisions of the Charter.

"The members of the council reaffirm their commitment to the collective security system of the Charter to deal with threats to peace and to reverse acts of aggression.

"The members of the Council express their deep concern over acts of international terrorism and emphasize the need for the international community to deal effectively with all such acts.

#### "Peacemaking and peace-keeping

"To strengthen the effectiveness of these commitments, and in order that the Security Council should have the means to discharge its primary responsibility under the Charter for the maintenance of international peace and security, the members of the Council have decided on the following approach.

"They invite the Secretary-General to prepare, for circulation to the Members of the United Nations by 1 July 1992, his analysis and recommendations on ways of strengthening and making more efficient within the framework and provisions of the Charter the capacity of the United Nations for preventive diplomacy, for peacemaking and for peace-keeping.

"The Secretary-General's analysis and recommendations could cover the role of the United Nations in identifying potential crises and areas of instability as well as the contribution to be made by regional organizations in accordance with Chapter VIII of the United Nations Charter in helping the work of the Council. They could also cover the need for adequate resources, both material and financial. The

Secretary-General might draw on lessons learned in recent United Nations peace-keeping missions to recommend ways of making more effective Secretariat planning and operations. He could also consider how greater use might be made of his good offices, and of his other functions under the United Nations Charter.

"Disarmament, arms control and weapons of mass destruction

"The members of the Council, while fully conscious of the responsibilities of other organs of the United Nations in the fields of disarmament, arms control and non-proliferation, reaffirm the crucial contribution which progress in these areas can make to the maintenance of international peace and security. They express their commitment to take concrete steps to enhance the effectiveness of the United Nations in these areas.

"The members of the Council underline the need for all Member States to fulfil their obligations in relation to arms control and disarmament; to prevent the proliferation in all its aspects of all weapons of mass destruction; to avoid excessive and destabilizing accumulations and transfers of arms; and to resolve peacefully in accordance with the Charter any problems concerning these matters threatening or disrupting the maintenance of regional and global stability. They emphasize the importance of the early ratification and implementation by the States concerned of all international and regional arms control arrangements, especially the START and CFE Treaties.

"The proliferation of all weapons of mass destruction constitutes a threat to international peace and security. The members of the Council commit themselves to working to prevent the spread of technology related to the research for or production of such weapons and to take appropriate action to that end.

"On nuclear proliferation, they note the importance of the decision of many countries to adhere to the Non-Proliferation Treaty and emphasize the integral role in the implementation of that Treaty of fully effective IAEA safeguards, as well as the importance of effective export controls. The members of the Council will take appropriate measures in the case of any violations notified to them by the IAEA.

"On chemical weapons, they support the efforts of the Geneva Conference with a view to reaching agreement on the conclusion, by the end of 1992, of a universal convention, including a verification regime, to prohibit chemical weapons.

"On conventional armaments, they note the General Assembly's vote in favour of a United Nations register of arms transfers as a first step, and in this connection recognize the importance of all States providing all the information called for in the General Assembly's resolution.

"In conclusion, the members of the Security Council affirm their determination to build on the initiative of their meeting in order to secure positive advances in promoting international peace and security. They agree that the United Nations Secretary-General has a crucial role to play. The members of the Council express their deep appreciation to the outgoing Secretary-General, His Excellency Mr. Javier Pérez de Cuéllar, for his outstanding contribution to the work of the United Nations, culminating in the signature of the El Salvador peace agreement. They welcome the new Secretary-General, His Excellency Dr. Boutros Boutros-Ghali, and note with satisfaction his intention to strengthen and improve the functioning of the United Nations. They pledge their full support to him, and undertake to work closely with him and his staff in fulfilment of their shared objectives, including a more efficient and effective United Nations system.

"The members of the Council agree that the world now has the best chance of achieving international peace and security since the foundation of the United Nations. They undertake to work in close cooperation with other United Nations Member States in their own efforts to achieve this, as well as to address urgently all the other problems, in particular those of economic and social development, requiring the collective response of the international community. They recognize that peace and prosperity are indivisible and that lasting peace and stability require effective international cooperation for the eradication of poverty and the promotion of a better life for all in larger freedom."

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Exhibit 40

Statement by the President of the Security Council  
(United Nations Document S/PRST/1994/40; 29 July 1994)



Security Council

Distr.  
GENERAL

S/PRST/1994/40  
29 July 1994

ORIGINAL: ENGLISH

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STATEMENT BY THE PRESIDENT OF THE SECURITY COUNCIL

After consultations of the Council held on 29 July 1994, the President of the Security Council made the following statement to the media on behalf of the Council:

"The members of the Security Council recall the statement issued on the occasion of the Security Council Summit of 31 January 1992 (S/23500), expressing deep concern over acts of international terrorism, and emphasizing the need for the international community to deal effectively with all such acts.

"The members of the Security Council strongly condemn the terrorist attack which took place in Buenos Aires, Argentina on 18 July 1994, which resulted in great loss of human life.

"The members of the Security Council express their sympathy and condolences to the victims and their families and to the people and Government of Argentina, who have suffered the consequences of this terrorist act.

"The members of the Security Council also strongly condemn the terrorist attacks in London on 26 and 27 July 1994, and express their sympathy to the victims and their families, and to the people and Government of the United Kingdom.

"The members of the Security Council demand an immediate end to all such terrorist attacks. They stress the need to strengthen international cooperation in order to take full and effective measures to prevent, combat and eliminate all forms of terrorism, which affect the international community as a whole."

Exhibit 41

Declaration on Principles of International Law Concerning  
Friendly Relations and Co-operation Among States in Accordance  
with the Charter of the United Nations, Resolution 2625 (XXV),  
United Nations General Assembly,  
1883rd Plenary Meeting, 24 October 1970.

# **RESOLUTIONS**

**adopted by the General Assembly**

**during its**

**TWENTY-FIFTH SESSION**

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**15 September — 17 December 1970**

**GENERAL ASSEMBLY**

**OFFICIAL RECORDS : TWENTY-FIFTH SESSION**

**SUPPLEMENT No. 28 (A/8028)**



**UNITED NATIONS**

***New York, 1971***

**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,

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

*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.

*1883rd plenary meeting,  
24 October 1970.*

## 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.



Exhibit 42

Aerial Hijacking or Interference with Civil Air Travel,  
Resolution 2645 (XXV), United Nations General Assembly,  
1914th Plenary Meeting, 25 November 1970

# **RESOLUTIONS**

**adopted by the General Assembly**

**during its**

**TWENTY-FIFTH SESSION**

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**15 September — 17 December 1970**

**GENERAL ASSEMBLY**

**OFFICIAL RECORDS : TWENTY-FIFTH SESSION**

**SUPPLEMENT No. 28 (A/8028)**



**UNITED NATIONS**

*New York, 1971*

**2645 (XXV). Aerial hijacking or interference with civil air travel**

*The General Assembly,*

*Recognizing* that international civil aviation is a vital link in the promotion and preservation of friendly relations among States and that its safe and orderly functioning is in the interest of all peoples,

*Gravely concerned* over acts of aerial hijacking or other wrongful interference with civil air travel,

*Recognizing* that such acts jeopardize the lives and safety of the passengers and crew and constitute a violation of their human rights,

*Aware* that international civil aviation can only function properly in conditions guaranteeing the safety of its operations and the due exercise of the freedom of air travel,

*Endorsing* the solemn declaration<sup>11</sup> of the extraordinary session of the Assembly of the International Civil Aviation Organization held at Montreal from 16 to 30 June 1970,

*Bearing in mind* General Assembly resolution 2551 (XXIV) of 12 December 1969 and Security Council resolution 286 (1970) of 9 September 1970 adopted by consensus at the 1552nd meeting of the Council,

1. *Condemns*, without exception whatsoever, all acts of aerial hijacking or other interference with civil air travel, whether originally national or international, through the threat or use of force, and all acts of violence which may be directed against passengers, crew and aircraft engaged in, and air navigation facilities and aeronautical communications used by, civil air transport;

2. *Calls upon* States to take all appropriate measures to deter, prevent or suppress such acts within their jurisdiction, at every stage of the execution of those acts, and to provide for the prosecution and punishment of persons who perpetrate such acts, in a manner commensurate with the gravity of those crimes, or, without prejudice to the rights and obligations of States under existing international instruments relating to the matter, for the extradition of such persons for the purpose of their prosecution and punishment;

3. *Declares* that the exploitation of unlawful seizure of aircraft for the purpose of taking hostages is to be condemned;

<sup>11</sup> International Civil Aviation Organization, *Resolutions adopted by the Assembly, Seventeenth Session (Extraordinary)* (Montreal, 1970), resolution A17-1.

4. *Declares further* that the unlawful detention of passengers and crew in transit or otherwise engaged in civil air travel is to be condemned as another form of wrongful interference with free and uninterrupted air travel;

5. *Urges* States to the territory of which a hijacked aircraft is diverted to provide for the care and safety of its passengers and crew and to enable them to continue their journey as soon as practicable, and to return the aircraft and its cargo to the persons lawfully entitled to possession;

6. *Invites* States to ratify or accede to the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963,<sup>12</sup> in conformity with the Convention;

7. *Requests* concerted action on the part of States, in accordance with the Charter of the United Nations, towards suppressing all acts which jeopardize the safe and orderly development of international civil air transport;

8. *Calls upon* States to take joint and separate action, in accordance with the Charter, in co-operation with the United Nations and the International Civil Aviation Organization to ensure that passengers, crew and aircraft engaged in civil aviation are not used as a means of extorting advantage of any kind;

9. *Urges* full support for the current efforts of the International Civil Aviation Organization towards the development and co-ordination, in accordance with its competence, of effective measures in respect of interference with civil air travel;

10. *Calls upon* States to make every possible effort to achieve a successful result at the diplomatic conference to convene at The Hague in December 1970 for the purpose of the adoption of a convention on the unlawful seizure of aircraft, so that an effective convention may be brought into force at an early date.

*1914th plenary meeting,  
25 November 1970.*

<sup>12</sup> United Nations, *Treaty Series*, vol. 704 (1969), No. 10106.

Exhibit 43

Measures to Eliminate International Terrorism,  
Resolution 49/60, United Nations General Assembly  
84th Plenary Meeting, 9 December 1994  
(United Nations Document A/RES/49/60; 17 February 1995)



General Assembly

Distr.  
GENERAL

A/RES/49/60  
17 February 1995

Forty-ninth session  
Agenda item 142

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY  
[on the report of the Sixth Committee (A/49/743)]

49/60. Measures to eliminate international terrorism

The General Assembly,

Recalling its resolution 46/51 of 9 December 1991 and its decision 48/411 of 9 December 1993,

Taking note of the report of the Secretary-General, 1/

Having considered in depth the question of measures to eliminate international terrorism,

Convinced that the adoption of the declaration on measures to eliminate international terrorism should contribute to the enhancement of the struggle against international terrorism,

1. Approves the Declaration on Measures to Eliminate International Terrorism, the text of which is annexed to the present resolution;
2. Invites the Secretary-General to inform all States, the Security Council, the International Court of Justice and the relevant specialized agencies, organizations and organisms of the adoption of the Declaration;
3. Urges that every effort be made in order that the Declaration becomes generally known and is observed and implemented in full;
4. Urges States, in accordance with the provisions of the Declaration, to take all appropriate measures at the national and international levels to eliminate terrorism;

1/ A/49/257 and Add.1-3.

5. Invites the Secretary-General to follow up closely the implementation of the present resolution and the Declaration, and to submit to the General Assembly at its fiftieth session a report thereon, relating, in particular, to the modalities of implementation of paragraph 10 of the Declaration;

6. Decides to include in the provisional agenda of its fiftieth session the item entitled "Measures to eliminate international terrorism", in order to examine the report of the Secretary-General requested in paragraph 5 above, without prejudice to the annual or biennial consideration of the item.

84th plenary meeting  
9 December 1994

ANNEX

Declaration on Measures to Eliminate International Terrorism

The General Assembly,

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

Recalling the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, 2/ the Declaration on the Strengthening of International Security, 3/ the Definition of Aggression, 4/ the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, 5/ the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, 6/ the International Covenant on Economic, Social and Cultural Rights 7/ and the International Covenant on Civil and Political Rights, 7/

Deeply disturbed by the world-wide persistence of acts of international terrorism in all its forms and manifestations, including those in which States are directly or indirectly involved, which endanger or take innocent lives, have a deleterious effect on international relations and may jeopardize the security of States,

2/ Resolution 2625 (XXV), annex.

3/ Resolution 2734 (XXV).

4/ Resolution 3314 (XXIX), annex.

5/ Resolution 42/22, annex.

6/ Report of the World Conference on Human Rights, Vienna, 14-25 June 1993 (A/CONF.157/24 (Part I)), chap. III.

7/ See resolution 2200 A (XXI), annex.

/...

Deeply concerned by the increase, in many regions of the world, of acts of terrorism based on intolerance or extremism,

Concerned at the growing and dangerous links between terrorist groups and drug traffickers and their paramilitary gangs, which have resorted to all types of violence, thus endangering the constitutional order of States and violating basic human rights,

Convinced of the desirability for closer coordination and cooperation among States in combating crimes closely connected with terrorism, including drug trafficking, unlawful arms trade, money laundering and smuggling of nuclear and other potentially deadly materials, and bearing in mind the role that could be played by both the United Nations and regional organizations in this respect,

Firmly determined to eliminate international terrorism in all its forms and manifestations,

Convinced also that the suppression of acts of international terrorism, including those in which States are directly or indirectly involved, is an essential element for the maintenance of international peace and security,

Convinced further that those responsible for acts of international terrorism must be brought to justice,

Stressing the imperative need to further strengthen international cooperation between States in order to take and adopt practical and effective measures to prevent, combat and eliminate all forms of terrorism that affect the international community as a whole,

Conscious of the important role that might be played by the United Nations, the relevant specialized agencies and States in fostering widespread cooperation in preventing and combating international terrorism, inter alia, by increasing public awareness of the problem,

Recalling the existing international treaties relating to various aspects of the problem of international terrorism, inter alia, the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, 8/ the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970, 9/ the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, concluded at Montreal on 23 September 1971, 10/ the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted in New York on 14 December 1973, 11/ the International Convention against the Taking of

8/ United Nations, Treaty Series, vol. 704, No. 10106.

9/ Ibid., vol. 860, No. 12325.

10/ Ibid., vol. 974, No. 14118.

11/ Ibid., vol. 1035, No. 15410.



Hostages, adopted in New York on 17 December 1979, 12/ the Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980, 13/ the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988, 14/ the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988, 15/ the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988, 16/ and the Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March 1991, 17/

Welcoming the conclusion of regional agreements and mutually agreed declarations to combat and eliminate terrorism in all its forms and manifestations,

Convinced of the desirability of keeping under review the scope of existing international legal provisions to combat terrorism in all its forms and manifestations, with the aim of ensuring a comprehensive legal framework for the prevention and elimination of terrorism,

Solemnly declares the following:

I

1. The States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism, as criminal and unjustifiable, wherever and by whomsoever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States;
2. Acts, methods and practices of terrorism constitute a grave violation of the purposes and principles of the United Nations, which may pose a threat to international peace and security, jeopardize friendly relations among States, hinder international cooperation and aim at the destruction of human rights, fundamental freedoms and the democratic bases of society;
3. Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them;

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12/ Resolution 34/146, annex.

13/ International Atomic Energy Agency, document INFCIRC/225; to be published in United Nations, Treaty Series, vol. 1456, No. 24631.

14/ International Civil Aviation Organization, document DOC 9518.

15/ International Maritime Organization, document SUA/CONF/15/Rev.1.

16/ Ibid., document SUA/CONF/16/Rev.2.

17/ See S/22393 and Corr.1.

## II

4. States, guided by the purposes and principles of the Charter of the United Nations and other relevant rules of international law, must refrain from organizing, instigating, assisting or participating in terrorist acts in territories of other States, or from acquiescing in or encouraging activities within their territories directed towards the commission of such acts;

5. States must also fulfil their obligations under the Charter of the United Nations and other provisions of international law with respect to combating international terrorism and are urged to take effective and resolute measures in accordance with the relevant provisions of international law and international standards of human rights for the speedy and final elimination of international terrorism, in particular:

(a) To refrain from organizing, instigating, facilitating, financing, encouraging or tolerating terrorist activities and to take appropriate practical measures to ensure that their respective territories are not used for terrorist installations or training camps, or for the preparation or organization of terrorist acts intended to be committed against other States or their citizens;

(b) To ensure the apprehension and prosecution or extradition of perpetrators of terrorist acts, in accordance with the relevant provisions of their national law;

(c) To endeavour to conclude special agreements to that effect on a bilateral, regional and multilateral basis, and to prepare, to that effect, model agreements on cooperation;

(d) To cooperate with one another in exchanging relevant information concerning the prevention and combating of terrorism;

(e) To take promptly all steps necessary to implement the existing international conventions on this subject to which they are parties, including the harmonization of their domestic legislation with those conventions;

(f) To take appropriate measures, before granting asylum, for the purpose of ensuring that the asylum seeker has not engaged in terrorist activities and, after granting asylum, for the purpose of ensuring that the refugee status is not used in a manner contrary to the provisions set out in subparagraph (a) above;

6. In order to combat effectively the increase in, and the growing international character and effects of, acts of terrorism, States should enhance their cooperation in this area through, in particular, systematizing the exchange of information concerning the prevention and combating of terrorism, as well as by effective implementation of the relevant international conventions and conclusion of mutual judicial assistance and extradition agreements on a bilateral, regional and multilateral basis;

7. In this context, States are encouraged to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter;

8. Furthermore States that have not yet done so are urged to consider, as a matter of priority, becoming parties to the international conventions and protocols relating to various aspects of international terrorism referred to in the preamble to the present Declaration;

### III

9. The United Nations, the relevant specialized agencies and intergovernmental organizations and other relevant bodies must make every effort with a view to promoting measures to combat and eliminate acts of terrorism and to strengthening their role in this field;

10. The Secretary-General should assist in the implementation of the present Declaration by taking, within existing resources, the following practical measures to enhance international cooperation:

(a) A collection of data on the status and implementation of existing multilateral, regional and bilateral agreements relating to international terrorism, including information on incidents caused by international terrorism and criminal prosecutions and sentencing, based on information received from the depositaries of those agreements and from Member States;

(b) A compendium of national laws and regulations regarding the prevention and suppression of international terrorism in all its forms and manifestations, based on information received from Member States;

(c) An analytical review of existing international legal instruments relating to international terrorism, in order to assist States in identifying aspects of this matter that have not been covered by such instruments and could be addressed to develop further a comprehensive legal framework of conventions dealing with international terrorism;

(d) A review of existing possibilities within the United Nations system for assisting States in organizing workshops and training courses on combating crimes connected with international terrorism;

### IV

11. All States are urged to promote and implement in good faith and effectively the provisions of the present Declaration in all its aspects;

12. Emphasis is placed on the need to pursue efforts aiming at eliminating definitively all acts of terrorism by the strengthening of international cooperation and progressive development of international law and its codification, as well as by enhancement of coordination between, and increase of the efficiency of, the United Nations and the relevant specialized agencies, organizations and bodies.

Exhibit 44

Note by the President of the Security Council  
(United Nations Document S/26861; 10 December 1993)



Security Council

Distr.  
GENERAL

S/26861  
10 December 1993

ORIGINAL: ENGLISH

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NOTE BY THE PRESIDENT OF THE SECURITY COUNCIL

After the consultations held on 10 December 1993, the President of the Security Council issued the following statement on behalf of the members in connection with the item relating to the Libyan Arab Jamahiriya:

"The members of the Security Council held informal consultations on 10 December 1993 pursuant to paragraph 13 of resolution 748 (1992), by which the Council decided to review every 120 days or sooner, should the situation so require, the measures imposed by paragraphs 3 to 7 against the Libyan Arab Jamahiriya.

"After hearing all the opinions expressed in the course of consultations, the President of the Council concluded that there was no agreement that the necessary conditions existed for modification of the measures of sanctions established in paragraphs 3 to 7 of resolution 748 (1992)."

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Exhibit 45

Note by the President of the Security Council  
(United Nations Document S/PRST/1994/18; 12 April 1994)



Security Council

Distr.  
GENERAL

S/PRST/1994/18  
12 April 1994

ORIGINAL: ENGLISH

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NOTE BY THE PRESIDENT OF THE SECURITY COUNCIL

After the consultations held on 8 April 1994, the President of the Security Council issued the following statement on behalf of the members in connection with the item relating to the Libyan Arab Jamahiriya:

"The members of the Security Council held informal consultations on 8 April 1994 pursuant to paragraph 13 of resolution 748 (1992), by which the Council decided to review every 120 days or sooner, should the situation so require, the measures imposed by paragraphs 3 to 7 against the Libyan Arab Jamahiriya.

"After hearing all the opinions expressed in the course of consultations, the President of the Council concluded that there was no agreement that the necessary conditions existed for modification of the measures of sanctions established in paragraphs 3 to 7 of resolution 748 (1992)."

Exhibit .46

Note by the President of the Security Council  
(United Nations Document S/PRST/1994/41; 5 August 1994)





Security Council

Distr.  
GENERAL

S/PRST/1994/41  
5 August 1994

ORIGINAL: ENGLISH

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NOTE BY THE PRESIDENT OF THE SECURITY COUNCIL

After the consultations held on 5 August 1994, the President of the Security Council issued the following statement on behalf of the members in connection with the item relating to the Libyan Arab Jamahiriya:

"The members of the Security Council held informal consultations on 5 August 1994 pursuant to paragraph 13 of resolution 748 (1992), by which the Council decided to review every 120 days or sooner, should the situation so require, the measures imposed by paragraphs 3 to 7 against the Libyan Arab Jamahiriya.

"After hearing all the opinions expressed in the course of consultations, the President of the Council concluded that there was no agreement that the necessary conditions existed for modification of the measures of sanctions established in paragraphs 3 to 7 of resolution 748 (1992)."

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Exhibit 47

Note by the President of the Security Council  
(United Nations Document S/PRST/1994/76; 30 November 1994)



Security Council

Distr.  
GENERAL

S/PRST/1994/76  
30 November 1994

ORIGINAL: ENGLISH

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NOTE BY THE PRESIDENT OF THE SECURITY COUNCIL

After the consultations held on 30 November 1994, the President of the Security Council issued the following statement on behalf of the members in connection with the item relating to the Libyan Arab Jamahiriya:

"The members of the Security Council held informal consultations on 30 November 1994 pursuant to paragraph 13 of resolution 748 (1992), by which the Council decided to review every 120 days or sooner, should the situation so require, the measures imposed by paragraphs 3 to 7 against the Libyan Arab Jamahiriya.

"After hearing all the opinions expressed in the course of consultations the President of the Council concluded that there was no agreement that the necessary conditions existed for modification of the measures of sanctions established in paragraphs 3 to 7 of resolution 748 (1992)."

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Exhibit 48

Note by the President of the Security Council  
(United Nations Document S/PRST/1995/14; 30 March 1995)



Security Council

Distr.  
GENERAL

S/PRST/1995/14  
30 March 1995

ORIGINAL: ENGLISH

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NOTE BY THE PRESIDENT OF THE SECURITY COUNCIL

After the consultations held on 30 March 1995, the President of the Security Council issued the following statement on behalf of the members in connection with the item relating to the Libyan Arab Jamahiriya:

"The members of the Security Council held informal consultations on 30 March 1995 pursuant to paragraph 13 of resolution 748 (1992), by which the Council decided to review every 120 days or sooner, should the situation so require, the measures imposed by paragraphs 3 to 7 against the Libyan Arab Jamahiriya.

"After hearing all the opinions expressed in the course of consultations the President of the Council concluded that there was no agreement that the necessary conditions existed for modification of the measures of sanctions established in paragraphs 3 to 7 of resolution 748 (1992)."

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Exhibit 49

Letter dated 28 July 1994 from the Secretary-General addressed to  
the President of the Security Council  
(United Nations Document S/1994/900; 29 July 1994)



Security Council

Distr.  
GENERAL

S/1994/900  
29 July 1994

ORIGINAL: ENGLISH

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LETTER DATED 28 JULY 1994 FROM THE SECRETARY-GENERAL  
ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to bring to your attention the attached letter dated 26 July 1994, addressed to me by His Excellency Mr. Omar Mustafa Muntasser, Secretary of the General People's Bureau for Foreign Liaison and International Cooperation of the Socialist People's Libyan Arab Jamahiriya.

(Signed) Boutros BOUTROS-GHALI

Annex

[Original: Arabic]

Letter dated 26 July 1994 from the Permanent Representative  
of the Libyan Arab Jamahiriya to the United Nations addressed  
to the Secretary-General

I have the honour to transmit to you herewith a letter dated 26 July 1994 from Mr. Omar Mustafa Muntasser, Secretary of the General People's Committee for Foreign Liaison and International Cooperation.

(Signed) Mohamed A. AZWAI  
Permanent Representative



Enclosure

[Original: Arabic]

Letter dated 26 July 1994 from the Secretary of the General  
People's Committee for Foreign Liaison and International  
Cooperation of the Socialist People's Libyan Arab Jamahiriya  
addressed to the Secretary-General

As you know, since the adoption of Security Council resolutions 731 (1992) and 748 (1992) the Libyan Arab Jamahiriya has spared no effort, in all sincerity and good faith, to resolve the ongoing dispute between it and the United States, the United Kingdom and France. This is a dispute that the Libyan Arab Jamahiriya did not wish to see arise in the first place; and it sees no logical basis for its continued existence, since it is built on mistaken premises, does not advance the legitimate interest of any party involved and is incompatible with the climate that currently prevails world wide.

For all these reasons, the Libyan Arab Jamahiriya has been anxious to strive by all available means to end this dispute in a manner that is in keeping with the norms and provisions of international law and in compliance with the letter and spirit of the resolutions adopted by the United Nations. The Libyan Arab Jamahiriya has left no stone unturned to find a way out of this problem, as has been demonstrated in my numerous communications with you.

For the past two years, the Libyan Arab Jamahiriya has endeavoured to cooperate closely with and to be responsive to the organs of the United Nations, particularly the Security Council, the Secretariat and the International Court of Justice. It has not limited this cooperation to particular areas but has made it the embodiment of a general position adopted by the Libyan Arab Jamahiriya in the belief that it is the duty of all States Members of the United Nations to show their good faith and demonstrate their readiness to deal with the Organization in a positive manner, even if outward appearances indicate that this may not necessarily be in keeping with their own interests, as long as such a course is not incompatible with the principles of sovereignty and the higher strategic interests of the country.

Let me here place on record the steps that the Libyan Arab Jamahiriya has taken in the context of this policy:

1. It has complied fully and unconditionally with the Judgment of the International Court of Justice issued on 3 February 1994 concerning its territorial dispute with Chad, and an agreement was subsequently signed by the two countries on 4 April 1994 concerning practical modalities for the implementation of the Judgment.

Accordingly, a joint statement was issued by the two countries on 30 May 1994 recording the completion of the withdrawal of all Libyan military and civilian personnel from the Aouzou Strip with effect from that date under the supervision of the United Nations Aouzou Strip Observer Group (UNASOG) and in a manner satisfactory to both parties.

/...

In your report to the Security Council contained in document S/1994/672 you called attention to the manner in which the Libyan Arab Jamahiriya had acquitted itself and you commended its cooperation with UNASOG and the spirit of friendship that had been shown by the two countries.

2. Convinced of the importance of cooperating with the United Nations in the maintenance of international peace and security, the Libyan Arab Jamahiriya has declared in numerous letters addressed to you its total renunciation of terrorism in all its forms and its condemnation of all acts of terrorism. It has given expression to this clear position with a number of specific measures including, as purely indicative examples:

(a) The severance of contacts with all groups and factions involved in what are characterized as terrorist activities;

(b) The affirmation that there are no terrorist training camps or terrorist organizations in its territory. In this connection, the Libyan Arab Jamahiriya invited you to send a technical mission to ascertain this matter and, despite the absence thus far of any response to this objective and logical proposal, it renews its invitation for the dispatch of such a technical mission;

(c) Full cooperation by the Libyan Arab Jamahiriya, in demonstration of its good faith, with the Government of the United Kingdom in enhancing its capacity to counter terrorist activities. It has provided all of the information in its possession that might strengthen the capacity to counter and contain terrorism;

(d) The announcement by the Libyan Arab Jamahiriya of its complete readiness to cooperate with the French authorities investigating the UTA case and to provide all possible facilities to the French examining magistrate. Contacts continue to be maintained between the judicial authorities in the two countries with a view to reaching agreement on a programme to assist the French examining magistrate in completing his task.

3. There is no extradition agreement between the parties concerned, and all of the States that are parties to this dispute are legally bound by the provisions of a binding international convention that has entered into force, namely the 1971 Montreal Convention. Article 7 of the Convention stipulates that the Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, bring him to trial without delay. The Libyan Arab Jamahiriya has expressed its readiness to try the two suspects in Libya, and this is in keeping with the explicit provisions of article 7 of the Montreal Convention.

4. Despite all of the foregoing, and in an endeavour to reach a solution acceptable to all the parties, the Libyan Arab Jamahiriya can in principle accept the holding of the trial outside Libyan territory, provided that procedural guarantees can be provided to ensure a just and fair trial for the two accused. The Libyan Arab Jamahiriya is of the view that this can be achieved by the parties concerned accepting the proposal made by the secretariat of the League of Arab States and endorsed by the Council of the League in its resolution 5373 of 27 March 1994, which envisages the holding of the trial at

/...

the seat of the International Court of Justice at The Hague by a Scottish court applying Scots Law.

It goes without saying that this proposal met with the support of the members of the Movement of Non-Aligned Countries at the Ministerial Meeting held in Cairo last month, and it was subsequently supported by the Assembly of Heads of State and Government of the Organization of African Unity, meeting in Tunis.

You will doubtless note that in adopting these positions the Libyan Arab Jamahiriya has gone as far as it is possible to go and has reached the end of the road in seeking a way out of this problem. It has accepted a situation that it was not obliged to accept in accordance with correct legal norms.

Accordingly, the Libyan Arab Jamahiriya proposes the following alternatives for addressing the judicial dimension of the crisis with a view to determining the responsibility of the two accused for the Lockerbie incident:

1. That the two suspects be brought to trial immediately in Libya, in public and with full guarantees to ensure the justice and fairness of the trial, including the acceptance of international observers;
2. That the trial be held in any Arab country to be agreed upon, either by the existing courts or by a special tribunal instituted for this purpose;
3. That the trial be held at the seat of the International Court of Justice at The Hague or at any United Nations premises on the European continent, without opposition to the trial being conducted by a Scottish court applying Scots Law. Should the countries concerned and the United Nations accept this proposal and notify the Libyan Arab Jamahiriya accordingly in an official manner, the Libyan Arab Jamahiriya expresses its readiness to provide all the guarantees necessary for its full and faithful implementation, to take all the steps required thereby, including the conclusion of agreements with the countries concerned, and to provide the necessary undertakings to you and to the President of the Security Council.

The Libyan Arab Jamahiriya requests you to inform the President of the Security Council of the contents of this letter and to establish whatever contacts you deem appropriate with a view to reaching agreement on the selection of one of the proposed alternatives.

(Signed) Omar Mustafa MUNTASSER  
Secretary of the General People's Committee for  
Foreign Liaison and International Cooperation

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Exhibit 50

Letter dated 9 December 1993 from the Chargé D'Affaires A.I. of  
the Permanent Mission of the Libyan Arab Jamahiriya to the United  
Nations addressed to the Secretary-General  
(United Nations Document S/26859; 10 December 1993)



Security Council

Distr.  
GENERAL

S/26859  
10 December 1993  
ENGLISH  
ORIGINAL: ARABIC

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LETTER DATED 9 DECEMBER 1993 FROM THE CHARGE D'AFFAIRES A.I. OF  
THE PERMANENT MISSION OF THE LIBYAN ARAB JAMAHIRIYA TO THE  
UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

I have the honour to transmit herewith two letters from the Secretary of the General People's Committee for Foreign Liaison and International Cooperation, one dated 8 December 1993, concerning the initiatives taken by the Libyan Arab Jamahiriya with a view to finding a solution which meets the requirements of Security Council resolution 731 (1992), and the other dated 9 December 1993, concerning the position adopted by the summit meeting of African States participating in the machinery for the prevention, settlement and management of conflicts in Africa, held in Cairo on 6 and 7 December 1993, with regard to the conflict between the Libyan Arab Jamahiriya, the United States of America, the United Kingdom and France.

I should be grateful if you would have the text of this letter and its annexes circulated as a document of the Security Council.

(Signed) Ibrahim Abd Al Aziz OMAR  
Chargé d'affaires a.i.

Annex I

Letter dated 8 December 1993 from the Secretary of the General  
People's Committee for Foreign Relations and International  
Cooperation of the Libyan Arab Jamahiriya addressed to the  
Secretary-General

With reference to the letters dated 11 September 1993, 11 October 1993, 3 November 1993 and 30 November 1993, I have the honour to inform you that the Great Socialist People's Libyan Arab Jamahiriya, reaffirming its desire to reach a settlement of the conflict provoked by the three Western States over the Lockerbie case, has, following the adoption of Security Council resolution 883 (1993), taken several initiatives, directly or in consultation with friendly countries. These initiatives are aimed at finding a solution which meets the requirements of Security Council resolution 731 (1992) and settling the dispute between the Libyan Arab Jamahiriya and the three Western States over the means of implementing that resolution.

Thus, Colonel Muammar Qaddafi, leader of the glorious revolution of 1 September, sent a letter dated 25 November 1993 to His Holiness Pope John Paul II, in which he expressed his desire to cooperate with His Holiness and with Presidents Clinton and Mitterrand and Prime Minister John Major of the United Kingdom in determining the venue of a fair trial which would be acceptable to the suspects, their families and their lawyers.

Likewise, the sister Republic of Tunisia, which holds the chairmanship of the Arab Maghreb Union, proposed, in consultation with the Libyan Arab Jamahiriya, that the two suspects be interrogated and tried in France, as that country is one of the sponsors of Security Council resolutions 731 (1992), 748 (1992) and 883 (1993), relating to the dispute between the Libyan Arab Jamahiriya and the Western States concerned.

Furthermore, the Arab Republic of Egypt in consultation with the Great Jamahiriya, proposed to the Government of the United Kingdom that the two suspects be tried by a Scottish Court under the legislation applied in Scotland, provided that the trial were held in a third country or at the headquarters of the International Court of Justice in The Hague. No reply has been received to this proposal.

As we indicated in our letter of 11 October 1993, the position of the lawyers for the two suspects, as stated on 10 October 1993, has limited the arguments that the Libyan authorities might advance to persuade the suspects to travel to Scotland.

We believe that the initiatives we took following the adoption of Security Council resolution 883 (1993) will meet the approval of the two suspects and their lawyers and help the Security Council to discover the identity of the perpetrator of the bombing of Pan Am flight 103 and to punish him, and also to guarantee the right of the victims' families to receive compensation for the loss they suffered as a result of that tragic bombing.

In a desire to resolve certain issues which appeared complex and difficult to resolve, the Security Council has reconsidered more than one of its resolutions, such as resolution 799 (1992) of 18 December 1992 and resolution 837 (1993) of 6 June 1993, which was modified by resolution 885 (1993) of 16 November 1993.

The good faith of the three Western States and the sincere efforts which we have no doubt the Charter of the United Nations authorizes you to make and also paragraph 4 of Security Council resolution 731 (1992) and paragraph 14 of resolution 883 (1993) are, without a doubt, all elements which will make it possible to reach a settlement that respects international legality and preserves Libyan sovereignty and the honour of its people.

I should like to request that this letter be circulated as an official document of the General Assembly and of the Security Council and that you call for consultations on the aforesaid initiatives with a view to taking a position thereon.

(Signed) Omar Mustafa EL-MUNTASSER  
Secretary of the General People's  
Committee for Foreign Liaison and  
International Cooperation

Annex II

Letter dated 9 December 1993 from the Secretary of the General  
People's Committee for Foreign Relations and International  
Cooperation of the Libyan Arab Jamahiriya addressed to the  
Secretary-General

As you know, on 6 and 7 December 1993, a summit meeting of the African countries which are members of the mechanism to prevent, manage and settle conflicts in Africa, took place in Cairo.

Among the items on its agenda, the meeting considered the question of the conflict between the great Socialist People's Libyan Arab Jamahiriya and the three Western States, namely, the United States of America, France and the United Kingdom. The meeting adopted a declaration, of which I have the pleasure to transmit to you the paragraph concerning the question that relates to my country, which I request you to have circulated as a document of the General Assembly and the Security Council. The text reads as follows:

With regard to the request by the Libyan Government, the Heads of State and Government considered the dispute between the Libyan Arab Jamahiriya and the United States of America, France and the United Kingdom, took into account the resolutions of the Security Council and recalled those adopted by the Organization of African Unity in Cairo in 1993.

They also launched an appeal for the peaceful settlement of disputes, requested that the two suspects should be given a fair trial in a neutral country, and called upon the Secretary-General of the Organization to follow the question closely and submit a report on the peaceful settlement of the matter.

Accept, Sir, the assurances of my highest consideration.

(Signed) Omar Mustafa EL-MUNTASSER  
Secretary of the General People's  
Committee for Foreign Liaison and  
International Cooperation



Exhibit 51

Letter dated 30 March 1995 from the Permanent Representatives of  
France, the United Kingdom of Great Britain and Northern Ireland  
and the United States of America to the United Nations  
addressed to the Secretary-General  
(United Nations Document A/50/128-S/1995/247; 30 March 1995)



General Assembly  
Security Council

Distr.  
GENERAL

A/50/128  
S/1995/247 ✓  
30 March 1995  
ENGLISH  
ORIGINAL: ENGLISH AND  
FRENCH

GENERAL ASSEMBLY  
Fiftieth session  
Item 149 of the preliminary list\*  
MEASURES TO ELIMINATE  
INTERNATIONAL TERRORISM

SECURITY COUNCIL  
Fiftieth year

Letter dated 30 March 1995 from the Permanent Representatives  
of France, the United Kingdom of Great Britain and Northern  
Ireland and the United States of America to the United Nations  
addressed to the Secretary-General

We have the honour to transmit herewith the text of a tripartite declaration issued by our three Governments on 30 March 1995 concerning the implementation of Security Council resolutions 731 (1992) of 21 January 1992, 748 (1992) of 31 March 1992 and 833 (1993) of 11 November 1993 by the Libyan Arab Jamahiriya.

We should be grateful if you would have the text of the present letter and its annex circulated as a document of the General Assembly, under item 149 of the preliminary list, and of the Security Council.

(Signed) Jean-Bernard MÉRIMÉE  
Permanent Representative of France  
to the United Nations

(Signed) David H. A. HANNAY  
Permanent Representative of the  
United Kingdom of Great Britain  
and Northern Ireland to the  
United Nations

(Signed) Madeleine K. ALBRIGHT  
Permanent Representative of  
the United States of America  
to the United Nations

\* A/50/50.

Annex

Declaration dated 30 March 1995 by the Governments of France, the United Kingdom of Great Britain and Northern Ireland and the United States of America on the occasion of the ninth review of sanctions imposed on the Libyan Arab Jamahiriya by the Security Council in its resolution 748 (1992) of 31 March 1992

France, The United Kingdom of Great Britain and Northern Ireland and the United States of America reaffirm their joint declaration of 5 August 1994 (S/1994/938) and their common determination to bring to justice those responsible for the bombings of flights Pan Am 103 and UTA 772.

The three States regret that the Libyan Arab Jamahiriya has still not satisfied the French judicial authorities with respect to the bombing of flight UTA 772.

They are committed to full and comprehensive enforcement of the sanctions imposed on the Libyan Arab Jamahiriya.

They also reaffirm that the Libyan Arab Jamahiriya must commit itself definitively to ceasing all forms of terrorist activity and all assistance to terrorist groups and demonstrate, by concrete actions, its renunciation of terrorism.

They reiterate that, in accordance with the Security Council resolutions, the Government of the Libyan Arab Jamahiriya must ensure the appearance of the two Lockerbie suspects in the United Kingdom or United States, where they will receive a fair trial. The three States reaffirm that alternative proposals for trial in The Hague or elsewhere do not meet the Security Council requirements and are therefore unacceptable.

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Exhibit 52

Review of the Role of the International Court of Justice,  
Report of the Sixth Committee  
(United Nations Document A/8238; 11 December 1970)

UNITED NATIONS  
GENERAL  
ASSEMBLY



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Twenty-fifth session  
Agenda item 96

REVIEW OF THE ROLE OF THE INTERNATIONAL COURT OF JUSTICE

Report of the Sixth Committee

Reporter: Mr. Niseshi OKADA (Japan)

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46. Among the difficulties of a procedural or operational character to which reference was made were the rigid nature of some of the rules, the slow pace and the attendant high cost. It was nevertheless observed that international arbitration was equally cumbersome and at least as costly and that the general expenses of the Court were borne by the United Nations, in accordance with Article 33 of the Statute.

47. It was noted that to some extent these problems could be attributed to the parties, who did not have sufficient recourse to the possibilities offered by the Statute. In particular, attention was drawn to the provisions of Article 29 relating to summary procedure and to Article 26, paragraph 1, under which the Court could form one or more chambers to deal with particular categories of cases. In that connexion, it was suggested that it would be useful to specify for States the kinds of cases where it would be appropriate to resort to the procedures indicated in Articles 26 and 29, bearing in mind that it was for the Court to determine its procedural rules. Reference was also made to the possibilities offered by Articles 26, 30, paragraph 2, and Article 30. It was observed, however, that the resources offered by the Statute could not be utilized unless the parties so wished.

48. Other representatives nevertheless considered that the Court itself could help to improve the situation. In particular, the view was expressed that it would be useful for the Court to decide expeditiously on all questions relating to jurisdiction and other preliminary issues which might be raised by the parties. The practice of reserving decisions on such questions pending consideration of the merits of the case had many drawbacks and had been sharply criticized in connexion with the South West Africa cases and the Barcelona Traction case. It was also observed that the Court had shown excessive liberality with reference to requests for extensions of time-limits. The judgement and opinion in the Barcelona Traction case made it clear that the Court itself was aware of the fact that too much liberality in that regard could in the final analysis only be detrimental to the parties by prolonging the litigation unduly. Furthermore, the Court might consider speeding up both the written and oral phases of the proceedings and might even suggest that the parties should dispense with the oral proceedings when the written pleadings seemed adequate. Lastly, it was said that matters might be considerably accelerated if the Court, in certain cases, took the initiative of recommending that the parties should refer their dispute to the chamber of five judges provided for in Article 20 of the Statute.

Exhibit 53

Review of the Role of the International Court of Justice,  
Report of the Sixth Committee  
(United Nations Document A/8568; 10 December 1971)



UNITED NATIONS  
GENERAL  
ASSEMBLY



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Twenty-sixth session  
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REVIEW OF THE ROLE OF THE INTERNATIONAL COURT OF JUSTICE

Report of the Sixth Committee

Rapporteur: Mr. Alfons KLAFKOWSKI (Poland)

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(c) Procedures and methods of work

b7. A number of representatives considered that it was necessary to simplify and expedite the Court's procedure. Several of them noted, however, that the length of proceedings was very often due to the parties themselves, which requested long extensions of time-limits and postponements. It was generally agreed that the Court's control over the duration of written and oral proceedings should be strengthened. Mention was also made of a suggestion that the Court should be encouraged to take a decision on preliminary objections as quickly as possible and to refrain from joining them to the merits unless it was strictly essential.

b8. Several representatives mentioned the high cost of proceedings before the Court. Some of them, however, observed that since the general expenses of the Court were paid by the United Nations, the parties were required to pay only the fees of their counsel, and that arbitration was generally considered even more expensive. Reference was made to the idea of establishing a multilateral assistance fund to finance litigation costs; it was also suggested that the United Nations should draw up a list of qualified international jurists whom States could employ, with the costs being paid from the fund in question.

b9. In addition, it was suggested that Article 25 and Article 53, paragraph 2, of the Statute should be amended to raise slightly the present quorum and to abolish the casting vote of the President.

C. The question of the review of the role of the Court

1. General comments

50. It was recalled that General Assembly resolution 2723 (XXV), by which Member States and States Parties to the Statute of the International Court of Justice were invited to submit their views and suggestions concerning the role of the Court, had been the result of a compromise between the States that advocated the establishment of a committee to undertake such a review and those that were not prepared at that time to establish such a committee. It was pointed out that the report prepared by the Secretary-General on the basis of the replies from Governments (A/8392 and Add.1-4) reflected that same divergence of opinions. Some representatives, noting that only a quarter of the States consulted had replied to the questionnaire, argued that the review of the role of the

ESSAYS ON THE DEVELOPMENT  
OF THE INTERNATIONAL  
LEGAL ORDER

in memory of

HAROLF. VAN PANHUYS

*edited by*

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Exhibit 54

M. Lachs, "The Revised Procedure of the International Court of Justice" in Essays on the Development of The International Legal Order, pp. 21, 31 (1980)

## The Revised Procedure of the International Court of Justice<sup>1</sup>

### 1. Introduction

"We could, of course, construct a model of a legal system which did not include judicial decision-making—where the rules were perfectly clear, providing unambiguous direction for all conceivable situations and where compliance was perfect so that disputes never arose."<sup>2</sup>

This is a very interesting proposition but a very unreal one. The suggested "model" could not possibly be devised, as reality—and indeed law itself—by its very nature and functions, creates situations between men and between nations in which disputes are bound to arise: differences, confrontations, conflicts. It is inherent in the rule of law that the law must be interpreted; when different approaches are possible, questions as to the binding character of individual rules cannot but arise; factors of time and place, changes in the subjects of law, and many other elements, exert decisive influence on the application of law as such, i.e., its implementation. Then again, situations will inevitably arise where some subjects of law refuse to comply with a particular rule as they deny its applicability or even existence.

That is why procedures are needed for the resolution of disputes and for the clarification of the law by the confirmation or correction of particular interpretations. One such procedure leading to this end in international relations, the most advanced and the most sophisticated, is undoubtedly that offered by the international judicial system, epitomized by the International Court of Justice. From the very beginning rules of international procedure have had great autonomy. This was, of course, an autonomy of a formal character whereby the arbitral tri-

1. Rules of Court adopted in 1978; Resolution concerning the Internal Judicial Practice adopted in 1976.

2. G. Hughes, "Rules, Policy and Decision-Making in Law, Reason and Justice", in *Essays in Legal Philosophy*, ed. idem. (New York, 1969), p. 104. Cf. G. Morelli, *Controversia Internazionale, Questione, Processo*. (International Controversies, Questions, Procedure) in 60 *Rivista di Diritto Internazionale*, fasc. 1-2 (1977) p. 9 et seq.

bunal, commission or court was empowered to lay down rules of procedure.<sup>3</sup>

Throughout the nineteenth century this autonomous evolution continued, to culminate with the establishment of the Permanent Court of Arbitration.<sup>4</sup> In our own century, when the Permanent Court of International Justice was created, it was given specific freedom by its Statute to establish its own rules of procedure. Thus was the evolution confirmed, and the Permanent Court of International Justice took full advantage both of that freedom and *mutatis mutandis* of the exemplary rules already practised in matters of arbitration. The Rules of the Permanent Court of International Justice, as is well known, were inherited by the present International Court of Justice, and so, by the same token, was the tradition of a hundred years.

The consecration of this autonomy was first expressed in the provisions of the original Article 30 of the Statute of the Permanent Court of International Justice, which conferred upon it the right to "frame rules for regulating its procedure". This was later amended, and Article 30 reflected a dual right of the Court, in that it might frame "rules for carrying out its functions" while "in particular, it shall lay down rules of procedure". Thus rules of two categories were to be elaborated by the Court, and these rules finally found their reflection in two types of instrument, namely, the rules of procedure *before* the Court, and the rules concerning procedure *within* the Court.<sup>5</sup> It was in 1931 that the Permanent Court of International Justice adopted a resolution on its "Internal Judicial Practice". This could be viewed as having implemented the latter part of the revised provision of Article 30 of the Statute.<sup>6</sup>

As to rules of procedure *before* the Court, the Permanent Court was able to rely upon the copious practice of the arbitration tribunals that had been called into being throughout the nineteenth century. It also

3. "Whether so expressed or not in the protocol", commissions were held to have "an inherent right to establish rules governing the matters of presentation and consideration of cases submitted to them"; J. H. Ralston, *The Law and Procedure of International Tribunals* (Stanford: Stanford Univ. Press, 1926), p. 204, para. 365.

Since the *Alabama* case, it has been generally recognized, following the earlier precedents, that, in the absence of any agreement to the contrary, an international tribunal has the right to decide as to its own jurisdiction and it has the power to interpret for this purpose the instruments which govern that jurisdiction; ICJ Reports 1953, p. 119.

4. Cf. Art. 74 of the Hague Convention 1907: "the tribunal is entitled to issue rules of procedure for the conduct of the case . . ."

5. PCIJ Ser. D No. 2, pp. 103 et seq.

6. PCIJ Ser. D No. 2, 3rd Add., pp. 403-404, 842-843.

made use of the rules laid down by the two Hague Conventions of 1899 and 1907.<sup>7</sup>

But to what extent did the rules laid down by such international organs, in the exercise of their autonomy, differ from those imposed upon domestic courts? Here one cannot escape the impression that many of the ideas and concepts reflected in domestic jurisdictions have found their way into international proceedings. Those who drafted the rules in each case were, no doubt, influenced very largely by the schools or systems they belonged to.<sup>8</sup> And, sure enough, it was claimed that some rules of the Permanent Court of International Justice were "a sort of combination of the procedure in Anglo-Saxon countries and that followed on the continent".<sup>9</sup> It was even asserted that "the divergence between the Anglo-Saxon and continental standpoints... prevented members representing those different standpoints from reading the relevant provisions in the same manner".<sup>10</sup> This, however, may carry the *issue too far*. But it is of interest to note that in 1926, when revision of the rules on a specific point was discussed it was suggested that "the Statute must be construed in such a way as to hold a middle course between those two systems, and is could not be read exclusively in the spirit of the Anglo-Saxon system".<sup>11</sup>

Claims were made by representatives of both systems: it was argued in one connection that "the Court had been created in accordance with the continental conception: it was an entity, a body which gave judgment as such and was to be regarded as such".<sup>12</sup> Needless to say, such claims, far from being conceded, merely served to keep alive the sense of dichotomy behind the Statute and to emphasise the necessity not only of interpreting its provisions in the spirit of reasonable compromise, but also of finding the middle road where the Court could choose its own path, namely in framing its rules of procedure. Even so, the fact

7. Compare the earlier rules of the new Granadian Commission of 1857, *Moore's History and Digest of the International Arbitrations to which the United States has been a Party*, p. 2138, and other Commissions.

8. So it was argued: "Such commissions as have been less influenced by technicalities of the common law and to a larger degree controlled by the greater freedom in matters of practice prevailing under the Civil Law, have, at no loss to the course of justice, obtained results with less burdensome rules." Ralston, *op cit.*, p. 204, para. 365.

9. It was with reference to Article 45 of the Statute of the Court as adopted by the Permanent Court that this statement was made. PCIJ Ser. D No. 2, 3rd Add., p. 251, statement by the President when the revision of the rules of procedure was discussed in 1935.

10. Statement by the first President of the Court, Loder, PCIJ Ser. D No. 2, Add., p. 204.

11. Ser. D No. 2, Add., p. 202.

12. *Loc. cit.*, p. 195.



that procedure itself enjoyed a different status in different municipal systems of law, constituted an ever-present source of potential disagreement. I feel, therefore, that before proceeding further a digression may be helpful: to reflect briefly on procedural law in general, and on the historical distinction between the so-called "continental" and "common law" systems.

It cannot be denied that the international judicial system has become part of that wide branch of jurisprudence which includes the organization of the judiciary, its competence and, in general, what has been called "*le droit judiciaire*".<sup>13</sup>

In France it is generally called "*le droit judiciaire privé*",<sup>14</sup> but this last adjective can perhaps be a source of needless confusion. For even "civil" procedure performs a public function: it lays down rules for the intervention of courts to protect rights of the individual, of the State and society as a whole.<sup>15</sup> It is therefore more important to consider the functional character of what we call "procedural law", as an instrument for the implementation of substantive rules in order that justice may be administered. It cannot, however, be overlooked that procedures are meant to assure the functioning of the machinery of justice, to ensure that the law is respected in the very course of its application: in other words to protect the subjects of law and the effectiveness of its provisions. It therefore becomes clear that procedural law has a Januslike character and performs a double service.<sup>16</sup> Yet historically, as we know, procedure has been viewed as a formalistic element of law, one deprived of autonomy and merely subsidiary in the operation of the law.

Bearing in mind this special dualism, one should not be surprised that procedure has developed as a distinct branch of law. It is not everybody's favourite branch. Formal as it is by very definition, it has attracted the odium reserved for the vacuous. At the same time this formalism can be defended as necessary to protect whatever person appears before a court, from arbitrary treatment.<sup>17</sup> However, exaggerated

13. R. Morel, *Traité élémentaire de procédure civile* [Elementary Treatise of Civil Procedure] (Paris: Recueil Sirey, 1949).

14. H. Solus and R. Perrot, *Droit judiciaire privé* [Civil Judicial Procedure] (Paris: Recueil Sirey, 1961), pp. 12-14.

15. Cf. the Austrian Code of 1895 and the German Code of 1877. Cf. W. Siedlecki, *Civil Procedure* [in Polish] (Warsaw, 1977), pp. 10-12: he maintains that according to Polish law, Civil Procedure serves the rule of law.

16. "La procédure présente, en effet, un double visage. Elle est à la fois *solidaire* du droit substantiel et *indépendante* par rapport à lui." J. Vincent, *Procédure civile* [Civil Procedure] (Paris: Dalloz, 1976), p. 3.

17. "Le formalisme, entendu comme une protection contre l'arbitraire du juge, comme une garantie de liberté de la défense au sens large, ne saurait disparaître." J. Vincent, *op. cit.*, p. 13. See also Siedlecki, *op. cit.*, p. 12 et seq.

formalism may lead to inconvenience, become a weapon for abuse; it may delay and thus in some circumstances deny the administration of justice. The real danger inherent in a very sophisticated procedure is that it may begin to live its own life and become ill-adapted to the changes of substantive law, to changes in the structure of societies. When this happens, it ceases to perform the constructive function for which it was designed. Not infrequently, procedural rules have served the distortion of law, have outlived their usefulness, and have thus created an abyss between the strictly formal and the substantive provisions of law.

Municipal legal systems have tried to deal with these issues for centuries. What are known today as the adversary or, as some call it, "party presentation" and "inquisitorial" or "judicial investigation" systems have evolved throughout history. It is worth recalling that the first Roman judges were in part private judges (*judex unus*) appointed by the agreement of the parties. Hence the decision they handed down was *judicium privatum*. On the other hand, there was the magistrate, the jurisdiction judge. There were two procedures, one *in jure* and one *apud judicium*. The judge had no jurisdictional power, and if the judgment was not voluntarily carried out, a new action by the magistrate was necessary. In the course of time, this old Roman procedure was replaced by public procedure and a judicial procedure which has evolved as an instrument of public order. On the other hand, the old Germanic law had its origin in the atonement procedure, and it later evolved under the influence of Roman procedure, of that in Italian cities and Canon Law when it entered into wordly affairs.

Party presentation was originally dominant in both Roman and, later, Germanic law. It was the parties who retained the power of freely disposing of their rights. In the course of time the judge came to the forefront. The first codifications of Europe were born— in Prussia, that of Frederick the Great, published after his death in 1793; in Austria, the codification of Maria Theresa; in France, first the ordinances of Louis XIV, and later the code of Napoleon.<sup>18</sup>

The common law system too showed some influence of Roman Canon and Germanic Law.<sup>19</sup> However, the later development of Anglo-American civil procedures "has gone on its way, deriving nothing from

18. Compare on the subject A. Engelman et al., *A History of Continental Civil Procedure* (London: Murray, 1928), p. 3 et seq. See also some recent codifications, for instance in Poland: New Civil Code, Family Law, Code of Civil Procedure and Private International Law, 1964-1965.

19. See R. W. Miller, *Some Comparative Aspects of Civil Pleadings under Anglo-American and Continental Systems*, 12 *American Bar Association Journal* (1926) p. 407.

without and devolving from within the elements needed for its amendment and progress".<sup>20</sup>

As in all law, the religious element has played a role in the development of procedure, from the atonement existing in Germanic Law to the formula known in Common Law.<sup>21</sup>

In historical perspective, procedure has developed as the result of encounters between various national systems, of changes in the structure of States and the role of courts.<sup>22</sup> It is worth noting that half a century ago an authority stated that "it is probable that the changes in substantive law during the last century and a half have been much greater than the changes in procedure".<sup>23</sup> Whether national procedures have caught up with the requirements of our own times is a matter which need not be pursued here.

In point of fact, the last decades have brought serious changes.<sup>24</sup> Broadly speaking, more than two systems continue to exist side by side. There has been an evolution. For example, in French law, where "les habitudes du Palais conduisaient à abandonner la direction du procès aux plaideurs et à leurs conseils",<sup>25</sup> gradually attempts have been made

20. This was well expressed by Sir Frederick Pollock when he said that

the battles of pleaders which were fought for six centuries before our Lady the Common Law at Westminster, were true to an older tradition and the tradition is still alive under all the changes of outward form. Litigation . . . is a game in which the court is umpire. *Expansion of Common Law*, pp. 33-34; and Engelman, *op. cit.*, pp. 3-4.

21. "Lord Judge, I complain to God and thee." Thus, as it has been put, "The Judge sat not to try the case but to aid the plaintiff in obtaining the judgment of God." Pollock, *op. cit.*, pp. 142 and 143. See too Engelman, *op. cit.*, p. 39. In German Law the formula read "Herr Richter ich Klage Got und ju".

22. Cf. Giuseppe Chiovenola: "Roman and Germanic Elements in Continental Procedure" (Lecture delivered at the University of Palma, 5 December 1901), published as an annex to Engelman: *op. cit.*, p. 911.

23. S. Williston, Introduction to *A History of Continental Civil Procedure*, *op. cit.*, p. LX.

24. Cf., for instance, the evolution of French procedural law, dating back to 1667: the decision of the *Constituante* of 16 to 24 August 1790, *Code de Procédure Civile* of 1806 with its 1042 Articles, with small amendments of 1837, 1841 and 1858, has remained in force until 1935. Since then many changes have been introduced: in 1938, 1942 and 1944; a new Draft Code of Civil Procedure was presented in 1954; further changes were introduced as a result of the change of Constitution in 1958 and 1969. 1971, 1972 and 1973. It was only in 1975 that the new *Code de Procédure Civile* was introduced in France, as the expression of the most modern approach of the French judicial system to procedure.

25. J. Vincent, *op. cit.*, p. 507, and he adds: "Il est exact que dans la tradition française, et en dépit de certaines réformes le juge civil n'avait pas la direction du procès."; *op. cit.*, p. 510 (emphasis added). See also R. Désiry, "Le rôle du juge dans le déroulement de l'instance civile" in Dalloz, *Recueil analytique de jurisprudence*, 1956; 145 *Chronique*, and J. Normand, *L'office du juge et la contestation* [The Judge's Office and the Contest], (Thesis, Lille, Paris, 1965).

to strengthen the position of the judge and bestow upon him greater initiative and power in the proceedings. Thus, he is able to give impulsion to the proceedings and to determine what is called their "rhythmes" or "styles". In the German, Italian and other continental procedures, the role of the judge has become much stronger. In Poland, in the light of recent codification, it is even more so.<sup>26</sup> In contrast, the American system remains one in which "the parties are in the main charge of the litigation process . . . the adjudicators are passive, receptive, reactive"; and it was pointed out in a very interesting way that, "like Adam Smith's economic model, the adversary justice model is simpler and lovelier than the facts of life".<sup>27</sup>

It is not my present purpose to oblige any of these broad systems of procedural law to plead their merits before us, and to sit as judge upon them. But in turning to the specific field of enquiry, it is interesting to recall the influence of these ostensibly contrasting municipal systems on the development of the international judicial procedure.

It is against this background that the evolution of the rules of procedure in the Permanent Court of International Justice and the International Court of Justice needs to be viewed. Following the establishment of the first Permanent Court of International Justice, the first Rules were elaborated in 1922. Further attempts to revise and improve them were made in the following years. The first revisions were made in 1925 and in 1926; additional modifications were adopted in 1927, and other revisions were made in 1931 and 1936. The present Court re-adopted the old Rules in 1946 with very few changes. However, after twenty years of applying them the Court decided to take a fresh look, with a view to improving them and adapting them to the rapidly changing needs of the international community. It may be said frankly that perhaps some of the rules adopted in 1946 automatically, as it were, from the Permanent Court of International Justice of 1936, were not

26. The new Code of Civil Procedure imposes upon the Court the duty to investigate all aspects of a case (Art. 3, para. 2) in fact and law; the dominating factor is the search for the objective truth; thus, the Court is neither bound by the admissions of a party, nor by an opposition to evidence it wishes to call *ex officio*; even the passive attitude of the defendant does not relieve the Court from the obligation to investigate the foundation of the plaintiff's claim. Cf. J. Jodlowski, *Introduction to the System of Civil Procedure* [in Polish] (Warsaw, 1974); W. Bertuiewicz, *Outline of Civil Procedure* [in Polish] (Warsaw, 1974); Z. Resich, *Res Judicata* [in Polish] (Warsaw, 1978); and Siedlecki, *op. cit.*, pp. 52-60.

27. M. E. Frankel, *From Private Fight to Public Justice*, 51 *New York University Law Review* (October 1976) pp. 516-537, at pp. 516-517. A pioneer in the field of improvement of the existing system in his country, Judge Frankel developed his ideas in several studies: *The Adversary Judge*, 54 *Texas Law Review*, No. 3 (March 1976) pp. 465-487; *Curing Lawyers' Incompetence: primum non nocere*, 10 *Creighton Law Review*, No. 4 (June 1977) pp. 613-639.

well-fitted to the work of the Court of the new United Nations. This proved true in some cases which were brought before the Court during the decades which followed. The need for some changes was thus felt for some time, but only in 1967 was a Committee appointed to this end, and it has functioned for over ten years. As one who had the privilege of being a member of the Committee from the outset, and later its chairman, I feel it may be useful for me to put forward certain reflections on some of the changes which have been introduced into the Rules.

When the Court embarked on the revision of the Rules in 1967, the idea was to proceed to a thorough revision of all the Rules, but at a certain stage the Court came to the conclusion that it might be more practical to revise those Rules which were in urgent need of modification, and to continue with the work later. The outcome was the Court's publication in 1972 of a partial revision of its Rules.<sup>28</sup> The overall revision was however continued, and now, in 1978, the work has been concluded and a new set of Rules of Court published.<sup>29</sup>

The International Court of Justice has been singularly well placed to effect this revision. It has done it at a time when the international community has become universal, and the world-wide dimensions of international law have been generally recognized, and at a time when the General Assembly of the United Nations placed the role of the International Court on its agenda and devoted a discussion to it.<sup>30</sup> Many States do not share either of the two traditions prevailing at the time the Statute was adopted. Hence the necessity to accentuate the autonomy of international rules of procedure, despite the inevitable impact of municipal developments, and the rich jurisprudence in this field.

I do not intend to make any detailed analysis of all the revised Rules or the Resolution on the Court's Internal Judicial Practice. This, I think, should be left to competent commentators, as in the past. What I propose to do here is to indicate only the general lines of the revision, and give some illustrations of the solutions adopted. In fact, I wish to deal with the main actors on the scene: the parties and the Court.

In the relationship between the Court and the parties the Rules play an important role. It was indicated very early in the life of the international judiciary that the objective of the Rules was "to provide such

28. The Rules were adopted on 10 May 1972 and came into force on 1 September 1972. The revised Rules of 1972 have been amply commented upon in the literature. See E. Jiménez de Aréchaga, *The Amendments to the Rules of Procedure of the International Court of Justice*, 67 AJIL (1973) pp. 1-22; also G. Guyomar, *Commentaire du règlement de la cour internationale de justice* [Comment on the Rules of the International Court of Justice] (Paris: Pedone, 1973).

29. Adopted by the Court 14 April 1978, came into force 1 July 1978.

30. Cf. General Assembly Resolution 2723 (XXV), 15 December 1970.

indications as are indispensable for litigant parties" and "to inform those who are responsible for the conduct of a case before the Court what steps have to be taken and when and how".<sup>31</sup> However, the matter goes much further. The objective of the Rules, within the framework of the Statute, is to determine the rights and duties of the parties and the rights and duties of the Court. When the Court is attending to a case, the public proceedings involve a dialogue between the parties, the States or international organizations appearing before it. The Court and its members keep, of course, their own counsel, but by directing the proceedings and questioning the agents, counsel, witnesses and experts, take part in that dialogue. No less important for the decisions to be taken by the Court is the private dialogue carried on among members of the Court in the course of deliberation. If one bears in mind the number of judges involved, and the significance of the questions laid before them, the method of deliberation is of paramount importance to the final result. Thus two types of provisions are involved: the Rules, and Internal Judicial Practice.<sup>32</sup>

## 2. The Rules of Court

The rights of the parties and their status before the Court belong to the fundamental issues within the framework of any judicial procedure. In the case of the International Court of Justice, once a State asks for a dispute to be settled, the Court is of course under an obligation to proceed in such a way as to safeguard such rights as that State may possess *qua* litigant. However, the position of the other party is of key importance. If there is an agreement between the parties and no objection is raised concerning the Court's competence, the question raises no difficulties. However, the respondent State may raise what is known as a preliminary objection, and here the action taken by the Court and the rights of the parties must be balanced. This should be done by what the Court called, in one of its first cases, the adoption of "the principle best calculated to ensure the administration of justice, most suited to procedure before an international tribunal and most in conformity with the fundamental principles of international law".<sup>33</sup>

Two general approaches were advocated: in the early stage of the Permanent Court of International Justice one approach relied on the *Mavrommatis* precedent, hence calling for preliminary decision on the objection; the other, invoked by Judge Loder, was in favour of simultan-

31. PCIJ Ser. D No. 2, 3rd Add., pp. 804 and 758.

32. See *supra*, text at note 5.

33. The *Mavrommatis Palestine Concessions* Case, PCIJ Ser. A No. 2, p. 16.

eous proceedings on objections and merits.<sup>34</sup> The majority adopted the precedent of the Court as a basis, while limiting it to cases brought on application.<sup>35</sup>

The situation remained unchanged with the revision of the Rules in 1931, but the question was re-opened in 1936. Then, as will be recalled, Article 62 of the new Rules was introduced. Throughout all the succeeding years this question has been one which has caused the Court great difficulties, more particularly in view of the great number of preliminary objections that have been raised.<sup>36</sup>

It has been the practice of the Court to join preliminary objections to the merits, which has exposed it to most serious criticism, due to the prolongation of the case, the loss of time and the cost involved, especially when the final result has been a decision in favour of the preliminary objection, even after long argument on the merits. The Court in one case studied several thousand pages of documents, and after six years upheld an objection raised at the outset, having earlier disposed of other objections.

Since the matter is not elucidated in the Statute, and the practice of the Court results from precedent and its own decisions, it had become imperative to eliminate one of the sensitive areas on which the Court was vulnerable to criticism. More especially, it had to be made plain that preliminary objections should be viewed not as being limited to issues of jurisdiction, but as also being applicable to questions of admissibility, or other issues, which may require a clear decision before the merits of the case are broached. It is within this wider context that the Court had to face the need for a new solution. The choice open to it lay between the total refusal of any joinder to the merits, implying the immediate decision of preliminary questions, or the devising of some more flexible solution.<sup>37</sup>

The idea of considering all preliminary questions at once, and of

34. This proposal, reflecting a Dutch law of 1896, was supported by Judges Weiss, Altamira and Nyholm.

35. This is how Art. 38 of the 1926 Rules was born.

36. Before the PCIJ such objections were raised in 14 out of 38 cases; 4 of these were later withdrawn and in 9 cases decisions were given on preliminary objections only; in one judgment, the objection was joined to the merits. During the 32 years of the existence of the present Court, preliminary objections have been raised in 18 out of 46 cases: 3 of these were withdrawn and one of the preliminary objections was withdrawn, in 14 the Court handed down decisions on the preliminary objections only, in 3 cases the preliminary objections were joined to the merits.

37. Cf. E. Jiménez de Aréchaga, *op cit.*, p. 14 et seq. Cf. also G. Abi-Saab, *Les objections préliminaires dans la procédure de la Cour internationale* [Preliminary Objections in the Procedure of the International Court] (Paris: Pedone, 1967), p. 198 et seq.

rejecting any possibility of joinder to the merits had many advocates and presented many advantages. On the other hand, the Court could look back at some cases in which one of the parties had raised a preliminary objection, which the other had alleged to be linked to the merits; the latter had therefore claimed the need for joinder and the party raising the preliminary objection, while maintaining it, did not oppose joinder. Practically speaking, this attitude should have been viewed as consent to the treatment of the objection, not as a preliminary one, but as one to be given special attention by the Court: in other words, as admission that the objection ceased to have its original purpose.<sup>38</sup>

But such a situation was of course exceptional. The main difficulty arises where the parties do not even tacitly agree on the status of the objection. In such cases, the decision on the procedure to be followed lies squarely on the shoulders of the Court, and it was to install guidelines permitting the most efficient resolution of the case that the Rules were altered on this point in 1972. The Rule then adopted lays down that the Court *must* resolve the question of its jurisdiction before entering upon the merits of the case.<sup>39</sup> As to preliminary objections on other grounds, the Court made it clear that it shall "give its decision in the form of a judgment, by which it shall either uphold the objection, reject it or declare that the objection does not possess, in the circumstances of the case, an exclusively preliminary character".

If the latter decision is taken, the Court will enter upon the merits of the case, but this procedure should no longer be viewed as joinder of the objections to the merits. It is, in fact, the disqualification of a "preliminary" objection as not having an exclusively preliminary character: it then becomes just one of the defences raised by the respondent.

This decision, taken in 1972, was, there can be no doubt, an important step, resolving one of the most complicated and critical issues of procedure the Court had had to face throughout its existence. It was maintained in the final revision of the Rules in 1978.<sup>40</sup> One of its advantages lies in the way it can be expected to discourage the raising of objections which are not clearly of a preliminary character, since the respondent State would still be exposed to the case being dealt with on its merits. While the variety of objections possible at the preliminary stage cannot be foreseen, the practice of the Court has shown certain

38. This was a special type of joinder, and it is worth recalling that Max Huber, who was rather reluctant to see a special rule on joinder, admitted it in case of a general or special agreement between the parties. Cf. PCIJ Ser. D No. 2, Add., pp. 88-89.

39. New Art. 67 (1972), paras. 1, 6 and 7.

40. Previous Art. 67 becomes Art. 79 in the 1978 Rules, and remains unchanged.



typical preliminary objections, which could be disposed of by the Court at an early stage without its being compelled to go into the merits. There may of course be cases in which the Court may *dispose* of a case, merits and all, by finding, for instance, at a very early stage, while still discussing preliminary objections, that the dispute has ceased to exist. This would mean, however, that circumstances having arisen during the proceedings had entirely altered their context and foundation. The Court must retain flexibility, for cases vary—some have very particular features, to which attention must be given in the interest of the parties and of the administration of justice.

On the same subject of the right of the parties, more emphasis has been laid on consultation by the President "with regard to questions of procedure". It is made clear that the President has an obligation to "summon the agents of the parties to meet him as soon as possible after their appointment, and whenever necessary thereafter".<sup>41</sup> Thus the parties have a guarantee that they will be heard and that their views will be taken into account by the Court, not only at the beginning but throughout. Moreover, with regard to the number of pleadings and the order of filing, as well as the time-limits, the Court has to take into account "any agreement between the parties which does not cause unjustified delay".<sup>42</sup>

While maintaining the limitation of the exchange of documents to the memorial and counter-memorial, introduced in 1972, the new Rules also provide that there shall be a reply and a rejoinder "if the parties are so agreed". The Court may, however, decide *proprio motu* at the request of one of the parties that these pleadings are necessary.<sup>43</sup> In cases begun by the notification of a special agreement, the Court has maintained its 1972 innovation that the proceedings shall be governed by the provisions of the agreement, with the condition that the Court may

41. New Art. 31 (originally Art. 37, para. 1, of the 1936 and 1946 Rules) has become Art. 40 of the 1972 Rules. In the old Article the formula used was that the President "may summon the agents", and it was limited to this preliminary contact with them at the outset of the proceedings. In the present text it is brought forward into Art. 31, made a special Article, and it is made quite clear that the agents shall be summoned, not only as soon as possible after their appointment, but also "whenever necessary thereafter".

42. This was originally para. 3 of Art. 37 of the 1936 Rules, with the difference that it did not mention the question of delay, and limited the provision to taking into account the agreement of the parties "so far as possible". A similar text was adopted in 1946 as para. 3 of Art. 37. In 1972 the addition was made concerning "unjustified delay" and it became Art. 40, para. 3. Under the new Article, this innovation is maintained as well as the elimination of the words "so far as possible" which appeared in earlier texts. In other words, the rights of the parties are protected with the proviso that this should not cause unjustified delay (now Art. 44, paras. 1-2).

43. New Art. 45, para. 2 (former Art. 44, para. 2).

"after ascertaining the views of the parties" decide otherwise.<sup>44</sup>

A new provision has been introduced concerning applications by which States may propose "to found the jurisdiction of the Court upon a consent thereto yet to be given or manifested by the State against which such application is made". This is known as an invitation to *forum prorogatum*, and it has so far been applied in such a way that the application has been entered in the general list, which may have created the impression that a case was pending while, in fact, the respondent State had not manifested its will to react and engage in the proceedings. Henceforth, such a case will not "be entered in the general list nor any action be taken in the proceedings unless and until the State against which such application is made consents to the Court's jurisdiction for the purposes of the case".<sup>45</sup>

In implementation of Article 63, paragraph 1, of the Statute concerning the construction of a convention to which States other than those concerned in the case are parties, and the obligation imposed by the Statute to notify "all such States forthwith", a new Rule has been introduced: namely, that the Registrar who is mentioned in Article 63, paragraph 1, will act on the instructions of the Court.<sup>46</sup> Thus, seeking fully to protect the rights of such States, the Court has felt that in view of the further consequences of such a notification the Registrar should not act on his own, but should receive adequate instructions.

Another provision of interest to the parties deals with the Court sitting outside The Hague. This possibility is, of course, provided for by Article 22 of the Statute, which is couched in a more negative way: while establishing the seat of the Court at The Hague, it continues by saying that "this however shall not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable". Now, the new Rule on the subject relies on Article 22 of the Statute, but gives the parties a say in the matter by stating that, before so deciding, the Court "shall ascertain the views of the parties". Moreover, it makes it clear that the Court may decide that "all or part of the further proceedings in a case shall be held at a place other than the seat of the Court". This should constitute an encouragement to the

44. Art. 46, para. 1 (former Art. 45 of 1972 Rules, para. 1). The Rule of 1946 provided for quasi-identical procedures in both cases brought by way of Application or by Special Agreement. Furthermore, if the Agreement contains no such provision, and the parties have not agreed on the number and order of the pleadings, they have to file a memorial and counter-memorial within the same time-limits, and the Court "shall not authorize the presentation of Replies unless it finds them to be necessary". Para. 2 of Art. 46 (former para. 2 of Art. 45 adopted in 1972).

45. Art. 38, para. 5.

46. "The Court shall consider what direction shall be given to the Registrar in the matter." (Art. 43).

Exhibit 55

E. Jiménez de Aréchaga, "The Amendments to the Rules of Procedure of the International Court of Justice," 67 American Journal of International Law, pp. 1, 11, and 13 (1973)

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THE AMENDMENTS TO THE RULES OF PROCEDURE OF THE  
INTERNATIONAL COURT OF JUSTICE \*

By Eduardo Jiménez de Aréchaga \*\*

When the Court began the revision of its rules of procedure in 1967, the approach then followed was to attempt a systematic revision of the Rules in their entirety and as an integrated whole. However, in 1972, the Court suspended the full-scale and complete revision it had initiated and decided instead simply to amend certain articles of the existing Rules of Court.

Among the reasons determining this change of approach was the advice received from experienced authorities on the work of the Court. In 1970 former judges of the Court, former judges *ad hoc*, and those international lawyers who had pleaded before the Court in at least three cases were asked for their opinions on the revision of the Rules of Court within the provisions of the Statute. The opinions received showed a striking coincidence in the identification of those aspects of the Rules that urgently required amendment. A majority of the opinions received coincided as to the need to:

- (1) facilitate recourse to Chambers of the Court and concede to the parties some influence in the composition of *ad hoc* Chambers constituted under Article 26, paragraph 2, of the Statute;
- (2) accelerate and simplify both contentious and advisory proceedings and exercise greater control over oral proceedings;
- (3) regulate preliminary objections so as to settle them as soon as feasible and avoid the delay and expense involved in a double discussion of the same questions at both the preliminary stage and the stage of the merits.

Also in 1970 the General Assembly of the United Nations invited Member States and States parties to the Statute to submit views and suggestions concerning the role of the Court on the basis of a questionnaire prepared by the Secretary-General.<sup>1</sup> While the replies of governments covered a much wider field than that of the rules of procedure, several of them, when dealing with the procedures and methods of work of the Court, submitted a number of similar suggestions on the above-indicated topics.

It is therefore understandable why the Court decided in 1972 to embark as a matter of priority on the limited revision and amendment of certain articles of the Rules only, without prejudice to continuing with its comprehensive work of revision at a more leisurely pace.

It must be recalled that the existing Rules represent the accumulated experience of fifty years of operation of a permanent international judicial institution. This body of experience should not be recast lightly and to do

\* The text of the new rules can be found in the *Official Documents* section of this issue of the *JOURNAL*. Also in 11 ILM 899 (1972).

\*\* Judge, International Court of Justice. <sup>1</sup> A/Res/2723 (XXV), Dec. 15, 1970.

Vienna Conference on the Law of Treaties admitting telegraphic full powers as a valid written document.

(b) *Assessors in advisory proceedings*: The provision in Article 7 of the Rules concerning assessors has been opposed on the ground that the Court has never in fact made use of them. However this rule has been maintained and enlarged for two reasons. The first has reference to the way in which the provision relating to assessors is worded in the Statute (Art. 30, para. 2). As there framed, it is not self-executing, but is dependent for its effect on the existence of provisions in the Rules of Court. A provision in the Statute should not be made inoperative by omitting the necessary articles from the Rules of Court. Secondly, while it is true that the Court has never made use of assessors it has been suggested recently that they could play a very useful part, particularly in advisory proceedings. It has been urged that the use of assessors could provide the sort of expertise that would dispel the fear that the Court "being outside the mainstream of an [international] organization's activity, might come to decisions not fully sensitive to the internal requirements for effective operation."<sup>20</sup>

Paragraph 1 of Article 7 of the Rules has been amended in order to leave no doubt that this enabling provision may be applied by the Court not only in contentious proceedings but also in proceedings concerning a request for an advisory opinion.

### III

#### Preliminary Objections

The need to regulate in the Rules of Court the handling of preliminary objections in a more expeditious and rational way was one of the most frequent recommendations made in the various studies and commentaries concerning the improvement of the methods and procedures of work of the Court. There is a general feeling that past procedures, particularly as they have developed in recent times, are inadequate in that they have resulted in delays, duplication of work, repetition of arguments, and unnecessary discussion. It cannot be denied that in more cases than one the handling of preliminary questions has resulted in an expenditure of time, effort, and money for what has been in fact a double discussion of the same issues before the Court. The two most important amendments that have been introduced in this context are: (i) the determination of the jurisdiction of the Court at the preliminary stage of the case and (ii) the elimination of the express authorization in the Rules to join a preliminary objection to the merits. A comparison of the possible consequences of the new and old rules on the subject is offered below, as well as an examination of different types of preliminary objections and of other procedural aspects of the matter.

<sup>20</sup> LEO GAOS, *The International Court of Justice: Consideration of Requirements for Enhancing its Role in the International Legal Order*, 85 AJIL 278 (1971). Cf. observations by Switzerland, UN Doc. A/8382, para. 180.



(1) DETERMINATION OF THE JURISDICTION AT THE PRELIMINARY STAGE

The new rules of procedure provide that the Court must make a positive finding as to its jurisdiction at the preliminary stage of the proceedings before embarking on the merits of the case.

This requirement is based on the reasoning that the Court must satisfy itself that it possesses jurisdiction, not only before deciding a case, but before hearing its merits, since its jurisdiction comprises both the power to hear and determine a case. A State cannot be compelled to have the merits of a claim against it publicly discussed in the Court unless it has been established by the Court, in accordance with Article 36, paragraph 6, of the Statute, that the State has given its consent to the Court's jurisdiction. Article 53 of the Statute supports this view by providing that whenever one of the parties does not appear before the Court or fails to defend its case, the Court must, before reaching a decision on the merits, satisfy itself that it has jurisdiction. This requirement must apply *a fortiori* when a case is defended and a preliminary objection has been filed.

The need for the Court to reach a preliminary decision on those objections that affect its jurisdiction was not only advocated in the opinions of experts, but was particularly insisted upon in several governmental replies to the Secretary-General's questionnaire.<sup>21</sup> Some of these replies stated categorically that objections relating to jurisdiction should invariably be ruled upon before an examination of the merits, because a State could hardly be expected to explain its position in respect of the merits until it had been established that the Court had jurisdiction.<sup>22</sup>

A new paragraph, which reads as follows, has been inserted in Article 67 on preliminary objections:

6. In order to enable the Court to determine its jurisdiction at the preliminary stage of the proceedings, the Court, whenever necessary, may request the parties to argue all questions of law and fact, and to adduce all evidence, which bear on the issue.

This announces the intention of pronouncing upon the Court's jurisdiction at the preliminary stage of the proceedings. The difficulty which has arisen in the past for such a preliminary determination is that sometimes, particularly in relation to reservations to the acceptance of the jurisdiction of the Court, extremely delicate and important legal questions are raised that bear a close relationship to some of the issues on the merits of the case.

The answer found to this difficulty in the past has been to join such a preliminary objection to the merits. Thus, in the *Right of Passage over Indian Territory*<sup>23</sup> case the Court joined to the merits the second preliminary objection raised by India to the effect that the dispute had originated

<sup>21</sup> Observations by Canada *id.*, para. 334; United Kingdom, *ibid.*, Add. 1, para. 22; and New Zealand, *ibid.*, Add. 4.

<sup>22</sup> Observations by United States, Switzerland, and Sweden, UN Doc. A/8382, paras. 322, 326-27, and 333, respectively.

<sup>23</sup> [1957] ICJ 125.

before a certain date which had been fixed as a time-limit in the reservation *ratione temporis* made by India to its declaration recognizing compulsory jurisdiction.

The new paragraph 6 is intended to provide a different solution to the difficulties that in the past have compelled the Court to join to the merits a preliminary objection concerning its jurisdiction. In the presence of such an objection, the Court, instead of bringing in the whole of the merits by means of a joinder, would, according to paragraph 6, request the parties to argue at the preliminary stage those questions, even those touching upon the merits, which bear on the jurisdictional issue. Thus, there would no longer be a justification for leaving in suspense or for postponing a decision on the question of the Court's own jurisdiction.

Admittedly, a difficulty remains with regard to one particular objection relating to jurisdiction—the exception of domestic jurisdiction, which was also joined to the merits in the *Right of Passage* case. The invocation by a State of its domestic jurisdiction is equivalent to its saying that it has no international obligations vis-à-vis the claimant State. Thus, when the question of domestic jurisdiction is raised as a preliminary objection not only a part but the whole of the merits is brought into consideration.

The jurisprudence of the Court has found an answer to this problem. If the exception of domestic jurisdiction is obviously well founded, there will be no difficulty for the Court in upholding the objection, since in such an hypothesis the respondent State, having no obligation towards the other party, is the "sole judge" and, according to the terms of Article 2, paragraph 7, of the U.N. Charter, is not required "to submit such matters to settlement." But if, as often happens, the objection does not appear at the preliminary stage to be obviously well founded, there are ways to reject the preliminary objection without prejudging the merits against the respondent. This is accomplished by what has been described as the *prima facie* or provisional conclusion as to the legal titles relied upon by the applicant. The Court, as it did in the *Interhandel* case, does not attempt at the preliminary stage "to assess the validity of the grounds invoked" or "to give an opinion on their interpretation" but it merely considers whether the grounds invoked by the applicant "are such as to justify the provisional conclusion that they may be of relevance" in the case.<sup>24</sup>

## (2) DECISIONS WHICH MAY BE ADOPTED WITH REGARD TO PRELIMINARY OBJECTIONS

The 1946 Rules of Court, in Article 62, paragraph 5, provide that the Court "shall give its decision on the objection or shall join the objection to the merits." Thus, there is a choice among three possible decisions: to uphold the objection, to reject it, or to join it to the merits.

In recent times four preliminary objections have been joined to the merits, two jurisdictional objections in the *Right of Passage* case, and two objections to admissibility in the *Barcelona Traction* case. In the latter

<sup>24</sup> [1959] ICJ 24.

Exhibit 56

G. Guyomar, Commentaire du Règlement de la Cour Internationale de Justice: Interprétation et Pratique, p. 371 (1972)

PUBLICATIONS DE LA REVUE GÉNÉRALE DE DROIT INTERNATIONAL PUBLIC  
NOUVELLE SÉRIE — N° 20

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GENEVIÈVE GUYOMAR  
LICENCIÉE ÈS LETTRES  
DOCTEUR EN DROIT  
CHARGÉE DE RECHERCHES AU CENTRE NATIONAL  
DE LA RECHERCHE SCIENTIFIQUE

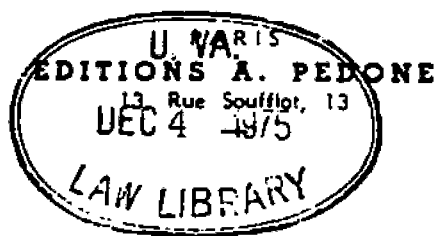
**COMMENTAIRE DU RÈGLEMENT  
DE LA  
COUR INTERNATIONALE DE JUSTICE  
INTERPRÉTATION ET PRATIQUE**

PRÉFACE DE M<sup>ME</sup> S. BASTID  
MEMBRE DE L'INSTITUT  
PROFESSEUR A LA FACULTÉ DE DROIT ET DES SCIENCES ÉCONOMIQUES  
DE PARIS

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*Ouvrage publié avec le concours du Centre National  
de la Recherche Scientifique*

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naire soit présentée avant l'expiration du délai fixe pour la première pièce de procédure écrite à déposer par la Partie qui soulève l'exception : pour le défendeur, cette pièce est le contre-mémoire, pour le demandeur, il s'agit du mémoire. Mais cet alinéa enterme ainsi la pratique suivie par la Cour dans l'affaire de l'*Or monétaire*, et reconnaît formellement la possibilité pour une Partie autre que le défendeur de soulever, le cas échéant, des exceptions préliminaires. Evitant, d'autre part d'utiliser l'expression même d'« exception préliminaire », il est à remarquer que l'alinéa 1 emploie la formule une « exception sur laquelle le défendeur (ou toute autre Partie) demande une décision avant que la procédure sur le fond se poursuive ». L'alinéa 1 précise enfin, que l'exception doit être présentée par écrit.

A l'alinéa 2, les mots « sous forme de copie » ont été ajoutés au membre de phrase « le bordereau des pièces à l'appui, qui sont annexées ».

Les alinéas 3 et 4 demeurent sans modification. Les alinéas 5 et 6 en revanche, sont entièrement nouveaux. L'alinéa 5 insiste sur la nécessité de limiter, à ce stade de la procédure, l'argumentation aux points ayant trait à l'exception, en vue d'éviter confusion et perte de temps. L'alinéa 6 reconnaît à la Cour le droit d'inviter les Parties à débattre tout point de fait ou de droit, et à produire tout moyen de preuve ayant trait à la question de la compétence de la Cour, ceci afin de permettre à cette dernière de se prononcer sur ce point au stade préliminaire de la procédure. L'accent semble donc mis sur la nécessité de statuer sur la compétence avant d'entamer l'examen de l'affaire au fond : c'est là un élément nouveau et vraisemblablement très important.

L'alinéa 7, correspondant à l'ancien alinéa 5 de l'article 62 du Règlement de 1946, a été profondément remanié. L'alinéa 7 précise en effet, contrairement à l'ancien alinéa 5, que la Cour statue *dans un arrêt*. Ceci enterme la pratique suivie jusqu'ici par la C.L.J. (54). Il faut souligner enfin, que l'expression « et la joint au fond », est remplacée par la formule « ou déclare que cette exception n'a pas dans les circonstances de l'espèce un caractère exclusivement préliminaire ». Il ne s'agit certainement pas là d'une modification purement rédactionnelle. Cependant, en l'absence de toute indication officielle relative au but effectivement poursuivi par la Cour, en l'absence surtout de toute pratique et de toute jurisprudence susceptible d'éclairer la portée réelle de ce remaniement, aucune interprétation valable ne saurait être proposée dans l'immédiat.

L'alinéa 8 de l'article 67 du Règlement de 1972 est entièrement nouveau. Il enterme la pratique suivie jusqu'ici par la Cour, en prévoyant qu'effet sera donné à tout accord intervenu entre les Parties, et tendant à ce que l'exception, soulevée en vertu de l'alinéa 1, soit tranchée lors de l'examen au fond (53).

(53) Voir ci-dessus, n. 47.

DEPARTMENT OF STATE  
DIVISION OF LANGUAGE SERVICES

(TRANSLATION)

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134258  
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French

Paragraph 6 acknowledges the Court's right to invite the Parties to debate any point of fact or law, and to produce any evidence relating to the issue of the Court's jurisdiction. in order to allow the Court to rule on this point in the preliminary stage of the procedure. In this way, the emphasis appears to be placed on the need to rule on the matter of jurisdiction prior to undertaking an examination of the case on its merits. This is a new and seemingly very important element

Exhibit 57

Resolution 827, United Nations Security Council,  
3217th meeting, 25 May 1993  
(United Nations Document S/RES/827)



Security Council

Distr.  
GENERAL

S/RES/827 (1993)  
25 May 1993

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RESOLUTION 827 (1993)

Adopted by the Security Council at its 3217th meeting, on  
25 May 1993

The Security Council,

Reaffirming its resolution 713 (1991) of 25 September 1991 and all subsequent relevant resolutions,

Having considered the report of the Secretary-General (S/25704 and Add.1) pursuant to paragraph 2 of resolution 808 (1993),

Expressing once again its grave alarm at continuing reports of widespread and flagrant violations of international humanitarian law occurring within the territory of the former Yugoslavia, and especially in the Republic of Bosnia and Herzegovina, including reports of mass killings, massive, organized and systematic detention and rape of women, and the continuance of the practice of "ethnic cleansing", including for the acquisition and the holding of territory,

Determining that this situation continues to constitute a threat to international peace and security,

Determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them,

Convinced that in the particular circumstances of the former Yugoslavia the establishment as an ad hoc measure by the Council of an international tribunal and the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the restoration and maintenance of peace,

Believing that the establishment of an international tribunal and the prosecution of persons responsible for the above-mentioned violations of international humanitarian law will contribute to ensuring that such violations are halted and effectively redressed,

Noting in this regard the recommendation by the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia for the establishment of such a tribunal (S/25221),





functioning of the International Tribunal at the earliest time and to report periodically to the Council;

9. Decides to remain actively seized of the matter.
-

Exhibit 58

Resolution 955, United Nations Security Council,  
3453rd meeting, 8 November 1994  
(United Nations Document S/RES/955)



Security Council

Distr.  
GENERAL

S/RES/955 (1994)\*  
8 November 1994

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RESOLUTION 955 (1994)

Adopted by the Security Council at its 3453rd meeting,  
on 8 November 1994

The Security Council,

Reaffirming all its previous resolutions on the situation in Rwanda,

Having considered the reports of the Secretary-General pursuant to paragraph 3 of resolution 935 (1994) of 1 July 1994 (S/1994/879 and S/1994/906), and having taken note of the reports of the Special Rapporteur for Rwanda of the United Nations Commission on Human Rights (S/1994/1157, annex I and annex II),

Expressing appreciation for the work of the Commission of Experts established pursuant to resolution 935 (1994), in particular its preliminary report on violations of international humanitarian law in Rwanda transmitted by the Secretary-General's letter of 1 October 1994 (S/1994/1125),

Expressing once again its grave concern at the reports indicating that genocide and other systematic, widespread and flagrant violations of international humanitarian law have been committed in Rwanda,

Determining that this situation continues to constitute a threat to international peace and security,

Determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them,

Convinced that in the particular circumstances of Rwanda, the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the process of national reconciliation and to the restoration and maintenance of peace,

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\* Reissued for technical reasons.



Believing that the establishment of an international tribunal for the prosecution of persons responsible for genocide and the other above-mentioned violations of international humanitarian law will contribute to ensuring that such violations are halted and effectively redressed,

Stressing also the need for international cooperation to strengthen the courts and judicial system of Rwanda, having regard in particular to the necessity for those courts to deal with large numbers of suspects,

Considering that the Commission of Experts established pursuant to resolution 935 (1994) should continue on an urgent basis the collection of information relating to evidence of grave violations of international humanitarian law committed in the territory of Rwanda and should submit its final report to the Secretary-General by 30 November 1994,

Acting under Chapter VII of the Charter of the United Nations,

1. Decides hereby, having received the request of the Government of Rwanda (S/1994/1115), to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 and to this end to adopt the Statute of the International Criminal Tribunal for Rwanda annexed hereto;

2. Decides that all States shall cooperate fully with the International Tribunal and its organs in accordance with the present resolution and the Statute of the International Tribunal and that consequently all States shall take any measures necessary under their domestic law to implement the provisions of the present resolution and the Statute, including the obligation of States to comply with requests for assistance or orders issued by a Trial Chamber under Article 28 of the Statute, and requests States to keep the Secretary-General informed of such measures;

3. Considers that the Government of Rwanda should be notified prior to the taking of decisions under articles 26 and 27 of the Statute;

4. Urges States and intergovernmental and non-governmental organizations to contribute funds, equipment and services to the International Tribunal, including the offer of expert personnel;

5. Requests the Secretary-General to implement this resolution urgently and in particular to make practical arrangements for the effective functioning of the International Tribunal, including recommendations to the Council as to possible locations for the seat of the International Tribunal at the earliest time and to report periodically to the Council;

6. Decides that the seat of the International Tribunal shall be determined by the Council having regard to considerations of justice and fairness as well as administrative efficiency, including access to witnesses, and economy, and subject to the conclusion of appropriate arrangements between

the United Nations and the State of the seat, acceptable to the Council, having regard to the fact that the International Tribunal may meet away from its seat when it considers it necessary for the efficient exercise of its functions; and decides that an office will be established and proceedings will be conducted in Rwanda, where feasible and appropriate, subject to the conclusion of similar appropriate arrangements;

7. Decides to consider increasing the number of judges and Trial Chambers of the International Tribunal if it becomes necessary;

8. Decides to remain actively seized of the matter.

#### Annex

#### Statute of the International Tribunal for Rwanda

Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations, the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 (hereinafter referred to as "the International Tribunal for Rwanda") shall function in accordance with the provisions of the present Statute.

#### Article 1

#### Competence of the International Tribunal for Rwanda

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, in accordance with the provisions of the present Statute.

#### Article 2

#### Genocide

1. The International Tribunal for Rwanda shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.

2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

3. The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

Article 3

Crimes against humanity

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation;
- (e) Imprisonment;
- (f) Torture;
- (g) Rape;
- (h) Persecutions on political, racial and religious grounds;
- (i) Other inhumane acts.

#### Article 4

##### Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II

The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:

- (a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- (b) Collective punishments;
- (c) Taking of hostages;
- (d) Acts of terrorism;
- (e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
- (f) Pillage;
- (g) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;
- (h) Threats to commit any of the foregoing acts.

#### Article 5

##### Personal jurisdiction

The International Tribunal for Rwanda shall have jurisdiction over natural persons pursuant to the provisions of the present Statute.

#### Article 6

##### Individual criminal responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute, shall be individually responsible for the crime.



2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal for Rwanda determines that justice so requires.

#### Article 7

##### Territorial and temporal jurisdiction

The territorial jurisdiction of the International Tribunal for Rwanda shall extend to the territory of Rwanda including its land surface and airspace as well as to the territory of neighbouring States in respect of serious violations of international humanitarian law committed by Rwandan citizens. The temporal jurisdiction of the International Tribunal for Rwanda shall extend to a period beginning on 1 January 1994 and ending on 31 December 1994.

#### Article 8

##### Concurrent jurisdiction

1. The International Tribunal for Rwanda and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.

2. The International Tribunal for Rwanda shall have primacy over the national courts of all States. At any stage of the procedure, the International Tribunal for Rwanda may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal for Rwanda.

Article 9

Non bis in idem

1. No person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the International Tribunal for Rwanda.

2. A person who has been tried by a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal for Rwanda only if:

(a) The act for which he or she was tried was characterized as an ordinary crime; or

(b) The national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the International Tribunal for Rwanda shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

Article 10

Organization of the International Tribunal for Rwanda

The International Tribunal for Rwanda shall consist of the following organs:

(a) The Chambers, comprising two Trial Chambers and an Appeals Chamber;

(b) The Prosecutor; and

(c) A Registry.

Article 11

Composition of the Chambers

The Chambers shall be composed of eleven independent judges, no two of whom may be nationals of the same State, who shall serve as follows:

(a) Three judges shall serve in each of the Trial Chambers;

(b) Five judges shall serve in the Appeals Chamber.

Article 12

Qualification and election of judges

1. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

2. The members of the Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (hereinafter referred to as "the International Tribunal for the Former Yugoslavia") shall also serve as the members of the Appeals Chamber of the International Tribunal for Rwanda.

3. The judges of the Trial Chambers of the International Tribunal for Rwanda shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

(a) The Secretary-General shall invite nominations for judges of the Trial Chambers from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;

(b) Within thirty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in paragraph 1 above, no two of whom shall be of the same nationality and neither of whom shall be of the same nationality as any judge on the Appeals Chamber;

(c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than twelve and not more than eighteen candidates, taking due account of adequate representation on the International Tribunal for Rwanda of the principal legal systems of the world;

(d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect the six judges of the Trial Chambers. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-Member States maintaining permanent observer missions at United Nations Headquarters, shall be declared elected. Should two candidates of the same nationality obtain the required majority vote, the one who received the higher number of votes shall be considered elected.

4. In the event of a vacancy in the Trial Chambers, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of paragraph 1 above, for the remainder of the term of office concerned.

5. The judges of the Trial Chambers shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Tribunal for the Former Yugoslavia. They shall be eligible for re-election.

#### Article 13

##### Officers and members of the Chambers

1. The judges of the International Tribunal for Rwanda shall elect a President.
2. After consultation with the judges of the International Tribunal for Rwanda, the President shall assign the judges to the Trial Chambers. A judge shall serve only in the Chamber to which he or she was assigned.
3. The judges of each Trial Chamber shall elect a Presiding Judge, who shall conduct all of the proceedings of that Trial Chamber as a whole.

#### Article 14

##### Rules of procedure and evidence

The judges of the International Tribunal for Rwanda shall adopt, for the purpose of proceedings before the International Tribunal for Rwanda, the rules of procedure and evidence for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters of the International Tribunal for the Former Yugoslavia with such changes as they deem necessary.

#### Article 15

##### The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.
2. The Prosecutor shall act independently as a separate organ of the International Tribunal for Rwanda. He or she shall not seek or receive instructions from any Government or from any other source.
3. The Prosecutor of the International Tribunal for the Former Yugoslavia shall also serve as the Prosecutor of the International Tribunal for Rwanda. He or she shall have additional staff, including an additional Deputy Prosecutor, to assist with prosecutions before the International Tribunal for Rwanda. Such

staff shall be appointed by the Secretary-General on the recommendation of the Prosecutor.

Article 16

The Registry

1. The Registry shall be responsible for the administration and servicing of the International Tribunal for Rwanda.
2. The Registry shall consist of a Registrar and such other staff as may be required.
3. The Registrar shall be appointed by the Secretary-General after consultation with the President of the International Tribunal for Rwanda. He or she shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Registrar shall be those of an Assistant Secretary-General of the United Nations.
4. The staff of the Registry shall be appointed by the Secretary-General on the recommendation of the Registrar.

Article 17

Investigation and preparation of indictment

1. The Prosecutor shall initiate investigations ex-officio or on the basis of information obtained from any source, particularly from Governments, United Nations organs, intergovernmental and non-governmental organizations. The Prosecutor shall assess the information received or obtained and decide whether there is sufficient basis to proceed.
2. The Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor may, as appropriate, seek the assistance of the State authorities concerned.
3. If questioned, the suspect shall be entitled to be assisted by counsel of his or her own choice, including the right to have legal assistance assigned to the suspect without payment by him or her in any such case if he or she does not have sufficient means to pay for it, as well as to necessary translation into and from a language he or she speaks and understands.
4. Upon a determination that a prima facie case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute. The indictment shall be transmitted to a judge of the Trial Chamber.

Article 18

Review of the indictment

1. The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a prima facie case has been established by the Prosecutor, he or she shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.

2. Upon confirmation of an indictment, the judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of the trial.

Article 19

Commencement and conduct of trial proceedings

1. The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

2. A person against whom an indictment has been confirmed shall, pursuant to an order or an arrest warrant of the International Tribunal for Rwanda, be taken into custody, immediately informed of the charges against him or her and transferred to the International Tribunal for Rwanda.

3. The Trial Chamber shall read the indictment, satisfy itself that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. The Trial Chamber shall then set the date for trial.

4. The hearings shall be public unless the Trial Chamber decides to close the proceedings in accordance with its rules of procedure and evidence.

Article 20

Rights of the accused

1. All persons shall be equal before the International Tribunal for Rwanda.

2. In the determination of charges against him or her, the accused shall be entitled to a fair and public hearing, subject to article 21 of the Statute.

3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.

4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;

(b) To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;

(c) To be tried without undue delay;

(d) To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;

(f) To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the International Tribunal for Rwanda;

(g) Not to be compelled to testify against himself or herself or to confess guilt.

#### Article 21

##### Protection of victims and witnesses

The International Tribunal for Rwanda shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.

#### Article 22

##### Judgement

1. The Trial Chambers shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law.

2. The judgement shall be rendered by a majority of the judges of the Trial Chamber, and shall be delivered by the Trial Chamber in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

/...

Article 23

Penalties

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of Rwanda.
2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

Article 24

Appellate proceedings

1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chambers or from the Prosecutor on the following grounds:
  - (a) An error on a question of law invalidating the decision; or
  - (b) An error of fact which has occasioned a miscarriage of justice.
2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chambers.

Article 25

Review proceedings

Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chambers or the Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit to the International Tribunal for Rwanda an application for review of the judgement.

Article 26

Enforcement of sentences

Imprisonment shall be served in Rwanda or any of the States on a list of States which have indicated to the Security Council their willingness to accept convicted persons, as designated by the International Tribunal for Rwanda. Such



imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the International Tribunal for Rwanda.

Article 27

Pardon or commutation of sentences

If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the International Tribunal for Rwanda accordingly. There shall only be pardon or commutation of sentence if the President of the International Tribunal for Rwanda, in consultation with the judges, so decides on the basis of the interests of justice and the general principles of law.

Article 28

Cooperation and judicial assistance

1. States shall cooperate with the International Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.

2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including, but not limited to:

- (a) The identification and location of persons;
- (b) The taking of testimony and the production of evidence;
- (c) The service of documents;
- (d) The arrest or detention of persons;
- (e) The surrender or the transfer of the accused to the International Tribunal for Rwanda.

Article 29

The status, privileges and immunities of the  
International Tribunal for Rwanda

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the International Tribunal for Rwanda, the judges, the Prosecutor and his or her staff, and the Registrar and his or her staff.

2. The judges, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

3. The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under articles V and VII of the Convention referred to in paragraph 1 of this article.

4. Other persons, including the accused, required at the seat or meeting place of the International Tribunal for Rwanda shall be accorded such treatment as is necessary for the proper functioning of the International Tribunal for Rwanda.

#### Article 30

##### Expenses of the International Tribunal for Rwanda

The expenses of the International Tribunal for Rwanda shall be expenses of the Organization in accordance with Article 17 of the Charter of the United Nations.

#### Article 31

##### Working languages

The working languages of the International Tribunal shall be English and French.

#### Article 32

##### Annual report

The President of the International Tribunal for Rwanda shall submit an annual report of the International Tribunal for Rwanda to the Security Council and to the General Assembly.

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Exhibit 59

Letter dated 5 August 1994 from the representatives of France,  
the United Kingdom of Great Britain and Northern Ireland and the  
United States of America to the United Nations  
addressed to the Secretary-General  
(United Nations Document A/49/299-S/1994/938; 8 August 1994)



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Forty-ninth session  
Item 145 of the provisional agenda\*  
MEASURES TO ELIMINATE INTERNATIONAL  
TERRORISM

SECURITY COUNCIL  
Forty-ninth year

Letter dated 5 August 1994 from the representatives of France, the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations addressed to the Secretary-General

We have the honour to transmit herewith the text of a tripartite declaration issued by our three Governments on 5 August 1994 concerning the implementation of Security Council resolutions 731 (1992) of 21 January 1992, 748 (1992) of 31 March 1992 and 883 (1993) of 11 November 1993 by the Libyan Arab Jamahiriya (see annex).

We should be grateful if you would have the text of the present letter and its annex circulated as a document of the General Assembly, under item 145 of the provisional agenda, and of the Security Council.

(Signed) Hervé LADSOUS  
Chargé d'affaires a.i.  
of the Permanent Mission  
of France to the  
United Nations

(Signed) D. H. A. HANNAY  
Permanent Representative  
of the United Kingdom  
of Great Britain and  
Northern Ireland to  
the United Nations

(Signed) Madeleine K. ALBRIGHT  
Permanent Representative  
of the United States  
of America to the  
United Nations

\* A/49/150.

ANNEX

Declaration made on 5 August 1994 by the Governments of France, the United Kingdom of Great Britain and Northern Ireland and the United States of America on the occasion of the seventh review of sanctions imposed on the Libyan Arab Jamahiriya by the Security Council in its resolution 748 (1992) of 31 March 1992

The Governments of France, the United Kingdom of Great Britain and Northern Ireland and the United States of America are determined to bring to justice those responsible for the bombings of flights Pan Am 103 and UTA 772. The victims of these two atrocities and their families deserve no less.

It is now over two years since the adoption by the Security Council of resolutions 731 (1992) of 21 January 1992 and 748 (1992) of 31 March 1992. In order to comply with those resolutions the Government of the Libyan Arab Jamahiriya must ensure the appearance of those charged with the bombing of Pan Am 103 for trial before the appropriate UK or US court, satisfy the French judicial authorities with respect to the bombing of UTA 772 and commit itself definitively to ceasing all forms of terrorist activity and all assistance to terrorist groups and demonstrate, by concrete actions, its renunciation of terrorism.

Today the Council conducted its seventh review of the sanctions regime imposed on the Libyan Arab Jamahiriya by resolution 748 (1992) and concluded that Libya had not yet complied with its obligations, which are clear, unconditional and not negotiable. There was therefore no question of lifting or suspending the sanctions.

Despite professing willingness to cooperate with the French judicial authorities, the Libyan authorities have not responded satisfactorily to the requests for cooperation from the French investigating magistrate.

As regards the Lockerbie issue, the Libyan Arab Jamahiriya has made a number of proposals, all of which would fall far short of compliance with the resolutions. In particular, a trial in a third country, even one before an international tribunal or a so-called Scottish court, is unacceptable: suspects cannot be allowed to choose the venue of their trial. These Libyan proposals are nothing more than attempts to divert attention from their refusal to comply.

Our Governments note that the Government of the Libyan Arab Jamahiriya has stated that it can accept the holding of the trial outside Libyan territory, provided that a just and fair trial can be guaranteed. The three Governments take this opportunity to emphasize once more that, in line with numerous assurances that have already been given, the two accused will receive a just and fair trial before a US or Scottish court.

Once the Secretary-General has reported to the Council that the Libyan Arab Jamahiriya has satisfied the French judicial authorities with respect to the bombing of UTA 772 and ensured the appearance before the appropriate UK or US

court of those charged with the bombing of Pan Am 103, we for our part will consider favourably the suspension of the sanctions against the Libyan Arab Jamahiriya in accordance with paragraph 16 of resolution 883 (1993) of 11 November 1993, pending the report on Libya's compliance with the remaining provisions of resolutions 731 (1992) and 748 (1992), which the Secretary-General will produce within 90 days of the suspension. Our Governments recall that in the case of non-compliance the Security Council has resolved to terminate the suspension immediately.

There is no need for the current impasse to continue. The solution lies with the Government of the Libyan Arab Jamahiriya. We reaffirm that we seek no more than compliance with the resolutions. Our Governments therefore call once again on the Libyan Arab Jamahiriya, in its own interest and that of its people, to fulfil its obligations completely and without any further delay.

Exhibit 60

S. Rosenne, The Law and Practice of the International Court,  
p. 70 (1985)

THE LAW AND PRACTICE  
OF THE  
INTERNATIONAL COURT

by

SHABTAI ROSENNE

SECOND REVISED EDITION

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The Netherlands.

made to the terms of its constitution'.<sup>1</sup> It then depends upon the terms of the Charter whether such expression of will is binding upon the other principal organs, or merely persuasive for them; but in general it cannot be doubted that the mutual relations of the principal organs ought to be based upon a general theory of co-operation between them in the pursuit of the aims of the Organization.

This approach opens the way to a functional conception of the task of the Court in its capacity of a principal organ of the United Nations, according to which, subject to overriding considerations of law (including judicial propriety), the Court must co-operate in the attainment of the aims of the Organization and strive to give effect to the decisions of other principal organs, and not achieve results which would render them nugatory. A useful example of this is seen in the *Corfu Channel* case (merits), where the Court based a decision on the question of jurisdiction, which in form appeared as one of the interpretation of a special agreement purporting to give effect to an earlier resolution of the Security Council, partly upon the necessity for ensuring full effect to that resolution. A year later, in the *Peace Treaties* case, the Court referred to 'its participation in the activities of the Organization' as a reason why, in principle, it should not refuse to give an advisory opinion.<sup>2</sup> As Judge Azevedo said in that case:

... [T]he Court, which has been raised to the status of a principal organ and thus more closely geared into the mechanism of the U.N.O., must do its utmost to co-operate with the other organs with a view to attaining the aims and principles that have been set forth.<sup>3</sup>

It is important to notice that the Charter does not create any hierarchical relationship between the principal organs. On the other hand, it imposes limitations on their activities either *ratione materiae*, or by means of certain rather intricate interlocking devices. Even the fact that the General Assembly takes part in the election of the members of all the other principal organs (Charter, Articles 23, 61, 87, 97, and Statute, Article 8), has exclusive control over the budget of the Organization (Charter, Article 17, Statute, Article 33),<sup>4</sup> can assign functions to certain other principal organs (Charter, Articles 66, 85) and receives or considers reports from the other organs<sup>5</sup> (Charter, Articles 15, 24, 88, 98), or, as Judge Azevedo put it in the *Competence of Assembly* case, has

1. *Admission* case, at p. 64.

2. 1950, at p. 71. And see further, with particular reference to the advisory competence, at p. 712 below.

3. 1950, at p. 82. But see criticism of Judge Krylov, at p. 109. The duty of co-operation may go further and include a duty e.g. not to hamper the use of means of direct settlement of disputes by States, recommended in Article 33 of the Charter. Cf. *Mittelbau* case (second phase), 1955, at p. 19; and *Sweden's Treaties* case (preliminary objections), without reference to Article 33, 1964, p. 20.

4. *Costa Express* case, 1962, p. 162.

5. Embracing the Court, see p. 71 below.

Exhibit 61

T. Elsen, Litispence Between the International Court of  
Justice and the Security Council, p. 69 (1986)

LITISPENDENCE BETWEEN  
THE INTERNATIONAL COURT OF JUSTICE  
AND THE SECURITY COUNCIL

BY

THEODOOR J.H. ELSEN

T.M.C. ASSER INSTITUUT  
THE HAGUE

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General Secretary); Institute Manager: G.J. de Roode.

The T.M.C. Asser Instituut was founded in 1965 by the Dutch universities offering courses in international law to promote education and research in the fields of law covered by the departments of the Institute: Private International Law, including International Commercial Arbitration, Public International Law including the Law of International Organisations, and Law of the European Communities.

The Institute discharges this task by the establishment and management of documentation and research projects, in some instances in co-operation with non-Dutch or international organisations, by the dissemination of information deriving therefrom and by publication of monographs and series. In addition, The Institute participates in the editing of the Yearbook Commercial Arbitration and in the editing and publishing of, *inter alia*, the Netherlands International Law Review and the Netherlands Yearbook of International Law.

of in which the Security Council in the discharge of that responsibility needs, and accordingly takes advantage of, completely unhampered freedom of action.(69) Even though the situation can involve many interesting justiciable issues, adjudication by the Court, pending proceedings in the Council, could unnecessarily complicate and aggravate the situation. Accordingly, in such a situation, instead of promoting the peaceful settlement of disputes the Court could endanger the maintenance of international peace and security, the very backbone of the organization.(70) Thus, a direct conflict between the responsibilities of the Court and the Council could result from this situation. Neither the Charter nor the jurisprudence of the Court offer an explicit solution for this contingent situation. It seems, however, imperative that in view of its primary responsibility the Council should prevail.

So far, this hypothetical situation has not occurred, at least not in conjunction with the pendency of simultaneous proceedings before the Court and the Council.(71) In the three most recent cases reviewed litispence was invoked by one of the disputing parties. In none of those cases the Council seemed disturbed by the parallel proceedings before the International Court. The situation will be completely different in case the Council invokes principles of litispence and calls on the Court to defer to the pending Council proceedings.

Without trying to offer final solutions it is suggested to conclude with some reflections that might offer guidance in approaching the gap left by the International Court.

