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International Institutions

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International Institutions

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I. General Assembly

The General Assembly is the main deliberate body of the United Nations.¹ It is composed of representatives of all Member States, each of which has one vote.² Although the decisions reached by the Assembly are not legally binding, they have a very influential role in expressing the opinion of the world on important international issues.³ Their work is largely carried through established committees and bodies, which study and report on very specific issues.⁴ The missions undertaken by the General Assembly in 2001 during the fifty-sixth session reveal newly emerging challenges for the organization.

The work accomplished by the First Committee (Committee), which deals with issues of disarmament and international security, is deemed vitally important during 2001. Following the terrorist attacks in the United States, Committee members responded with urgency to ensure that substantive disarmament and non-proliferation measures would be undertaken.⁵ Initially, the Committee focused on the attacks and the fact that the enormous loss of life had occurred absent the use of any weapon on the agenda of the Committee.⁶ However, realizing that the tragedy could have been far worse had there been use of nuclear, biological, or chemical weapons, the Committee discussed security concerns in the context of the reality that these weapons could be used in the future.⁷ By targeting innocent civilians and structures, the acts shook the entire world's sense of security.⁸ These growing threats

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1. See General Assembly, *Background Information*, available at <http://www.un.org/ga/56/about.htm> (last modified Apr. 25, 1997).

2. *Id.*

3. *Id.*

4. *Id.*

5. See United Nations Press Release, *Disarmament Progress Needed As Part of Anti-Terrorism Effort, By Terms of Draft Resolution in First Committee* (Nov. 6, 2001), available at <http://www.un.org/news/press/docs/2001/GADIS3219.doc.htm> [hereinafter *Disarmament Progress*].

6. See United Nations Press Release, *Remarkable Unity in Wake of 11 September Terrorist Attack Must Be Used To Reinforce Multilateral Disarmament Regime, First Committee Told* (Oct. 8, 2001), available at <http://www.un.org/news/press/docs/2001/gadis3198.doc.htm>.

7. *Id.*

8. *Id.*

caused by the unprecedented terrorist acts made the work of the United Nations' organization for peace, disarmament, non-proliferation, and security more crucial than before.⁹

In the conclusion of its work for the 2001 session, the Committee approved fifty-one draft texts for action by the General Assembly, twenty-six of them without a vote.¹⁰ The majority of the texts addressed nuclear weapons and other issues relating to international security. Andres Erdos, the Committee Chairman, viewed the Committee's work as a manifestation of international consensus and cooperation towards the new global threats.¹¹ In particular, the Committee adopted, without vote, a resolution on multilateral cooperation against terrorism.¹² In adopting these resolutions, the Assembly emphasized the development of a unified response to global threats in the area of disarmament and proliferation in order to ensure international peace and security and to reinforce global efforts against terrorism.

II. The Security Council

The overriding goal of the Security Council (the Council) is to maintain international peace and security.¹³ The crucial issues at the forefront of the Council's agenda in 2001 include terrorism, Afghanistan, Africa, and continuing Middle East violence.¹⁴ Additionally, the Council has embarked on the very challenging role of monitoring the progress of two post-conflict territories, Kosovo and East Timor.¹⁵ The Council's activity in 2001 highlights a number of pressing issues that reveal continuing problems and new threats within the international community.

A. AFGHANISTAN

Prior to the September 11th attacks on the United States, the Council had met twice in Afghanistan. The objectives at these meetings included strengthening sanctions against the Taliban.¹⁶ The Council had continuing concerns over the regime because of numerous allegations of drug trafficking, horrendous and widespread human rights violations, and terrorism.¹⁷ Sanctions against the Taliban had been imposed by resolutions 1267 (1999) and 1333 (2000), including embargoes on arms, travel, and financial measures.¹⁸ The measures imposed by the Council in these resolutions are targeted against the Taliban, assets and undertakings owned or controlled by them, and individuals and entities associated with them.¹⁹ On July 30, 2001, the monitoring mechanism for the sanctions was established

9. See Disarmament Progress, *supra* note 5.

10. *Id.*

11. *Id.*

12. *Id.*

13. See Security Council, *Background*, at <http://un.org/documents/scinfo.htm> (last modified Oct. 11, 2000).

14. See United Nations Press Release, Afghanistan, Terrorism, Africa, Continuing Middle East Violence Among Crucial Issues for Security Council in 2001 (Jan. 14, 2001), available at <http://www.un.org/News/Press/docs/2002/sc7266.doc.htm> [hereinafter Crucial Issues].

15. Fredic L. King, *Security Council Governance of Postconflict Societies: A Plea for Good Faith and Informed Decision Making*, 95 AM. J. INT'L L. 579, 579 (July 2001).

16. See Crucial Issues, *supra* note 14.

17. *Id.*

18. S.C. Res. 1267, U.N. SCOR, 54th Sess., U.N. Doc. S/RES/1267 (1999); S.C. Res. 1333, U.N. SCOR, 55th Sess., U.N. Doc. S/RES/1333 (2000).

19. See Report of the Secretary-General on the humanitarian implications of the measures imposed by Security Council resolutions 1267 (1999) and 1333 (2000) on the territory of Afghanistan under Taliban control, 56th Sess., U.N. Doc. S/2001/1215 (Dec. 18, 2001) [hereinafter Measures].

through the adoption of Resolution 1368 (2001).²⁰ With the fall of the Taliban during the end of the year, these sanction measures appear to be of limited use.²¹

In the aftermath of the September 11th attacks on the United States, Afghanistan has consumed the attention of the Council.²² On November 13, the first Council meeting on Afghanistan convened following the United States initiation of armed action against the Al Qaeda organization and its Taliban hosts.²³ At the meeting Secretary-General Kofi Annan stated that the country was one of the biggest challenges faced by the United Nations.²⁴ Because Afghanistan suffers political and economic devastation it will take years, if not decades, to transform.²⁵ The United Nations continues to convene many international meetings aimed at assembling a financial coalition to underwrite economic aid to reconstruct the country.²⁶

The Taliban rule in Afghanistan is marked by two decades of complete instability and war.²⁷ Even before U.S. bombing began, roads, bridges, and irrigation systems were in ruins. Secular education is virtually nonexistent. Civilians have born the brunt of abuse because of years of fighting in Afghanistan.²⁸ The discrimination practiced against women has exacerbated their suffering. Throughout the year, there has been a drastic worsening of the humanitarian situation in Afghanistan due to the culminating effects of chronic poverty, hunger, drought, war, and displacement of civilians.²⁹ In order to respond to the heightened humanitarian challenges faced by Afghanistan, a regional coordination structure was established with the United Nations Regional Humanitarian Coordinator serving as head.³⁰

The United Nations has been delivering thousands of tons of food a month since October 2001. Because much of the population is malnourished and is in grave danger of famine and disease, getting food into the country was a priority. Other critical priorities included the resumption of essential services such as water, sanitation, health care, and minefield clearing. The United Nations also plans to focus on critical infrastructure.³¹ A massive program must be implemented to rebuild roads, bridges, airports, schools, and irrigation systems. Agriculture also needs to be improved, supplemented with a jobs training program to assist the reintegration of millions of refugees.³² In the long term, the goals for the country include getting Afghans working together with international groups to develop a modern judicial system, establish a constitution, hold national elections, and build a national army.³³ The United Nations plans to take an active role in ensuring the establishment of a permanent broad-based government.³⁴

20. S.C. Res. 1368, U.N. SCOR, 56th Sess., U.N. Doc. S/RES/1368 (2001).

21. See *Measures*, *supra* note 19, at 20.

22. See Report of the Secretary-General, *The situation in Afghanistan and its implications for international peace and security*, 56th Sess., U.N. Doc. A/56/681-S/2001/1157 (Dec. 6, 2001) [hereinafter *Afghanistan*].

23. See *Crucial Issues*, *supra* note 14.

24. *Id.*

25. *Id.*

26. *Id.*

27. See *Afghanistan*, *supra* note 22.

28. *Id.*

29. *Id.*

30. *Id.*

31. See Lee Walczak, Stan Crock and Frederik Balfour, *Winning the Peace*, *Bus. Wk.*, Dec. 3, 2001, at 35.

32. *Id.*

33. *Id.*

34. *Id.*

The Council has responded with readiness in light of these concerns. On November 14, 2001, the Council unanimously adopted Resolution 1378 (2001).³⁵ This resolution reaffirmed the United Nations' goal of serving in a heightened role of support for the efforts of the Afghan people to develop a new and transitional administration leading to the creation of a new government.³⁶ The resolution provided further support to Lakhdar Brahimi, who was given overall authority for the humanitarian, human rights, and political endeavors of the United Nations in Afghanistan.³⁷ He was also entrusted with overseeing the development of plans for the rehabilitation and reconstruction of the country.³⁸ An Integrated Management Task Force was established to assist Brahimi in his efforts.³⁹

Following that meeting the representatives of the Northern Alliance and other Afghan groups convened a meeting in Bonn, Germany. On December 5, they signed an agreement on provisional political arrangements, pending the re-establishment of permanent government institutions.⁴⁰ The following day, the Council endorsed that agreement by unanimously adopting Resolution 1383 (2001).⁴¹ In the text, the Council declared its readiness to take further action, on the basis of a report by the Secretary-General, to support the interim institutions established by the agreement and to support its implementation.⁴²

In the end of the year, the Security Council endorsed Afghanistan's new interim government, with Pushtan Hamid Karzai serving as interim Afghan President. Following the collapse of the Taliban, the Security Council authorized an International Security Assistance Force to operate in Afghanistan for six months to help maintain security in the country.⁴³ The Security Council unanimously endorsed a resolution to provide peacekeepers in Afghanistan. Hamid Karzai, the interim president, backed the United Nations on the issue of peacekeeping.⁴⁴ The peacekeepers are deemed vitally important to the immediate future of the country, whose history is riddled with tribal fighting.⁴⁵ Moreover, the International Security Assistance Force serves to assist the interim government in performing its work without security concerns.⁴⁶ The troops are composed from countries that volunteer to help and operate under the U.N. mandate to coordinate with American forces already there.⁴⁷

Afghanistan has emerged in the forefront of diplomatic activity following the tragic events of September 11. Even prior to the attacks, there were a number of countries that viewed Afghanistan with concern and believed it to pose a serious threat to international security. However, following the terrorist attacks, these threats became more evident than ever.⁴⁸ This past year has been a challenging one for the United Nations, which has faced a number of obstacles, especially ones due to the lack of cooperation of the Taliban on a variety of

35. S.C. Res. 1378, U.N. SCOR, 56th Sess., U.N. Doc. S/RES/1378 (2001).

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. See Crucial Issues, *supra* note 14.

41. S.C. Res. 1383, U.N. SCOR, 56th Sess., U.N. Doc. S/RES/1383 (2001).

42. *Id.*

43. See Jeff Zeleny, *Kabul Seeks End to Bombings*, CHI. TRIB., Dec. 30, 2001, at 3.

44. See Bill Varner, *Afghanistan Force Approved in 15-0 UN Security Council Vote*, BLOOMBERG NEWS, Dec. 20, 2001.

45. *Id.*

46. *Id.*

47. See Celestine Bohlen, *A Nation Challenged*, N.Y. TIMES, Dec. 20, 2001, at B1.

48. See Afghanistan, *supra* note 22.

humanitarian and political issues including its total unwillingness to heed to the international community's concern.⁴⁹ While progress has been made in the country following the collapse of the Taliban, the United Nations will need to continue to develop a comprehensive approach to the country.⁵⁰ The objectives in the future are twofold, which include ensuring the Afghans ability to exercise their right to determine their form of government, and establishing a stable Afghanistan with peaceful relations with its neighbors.⁵¹

B. TERRORISM

Following the September 11th terrorist acts in New York, Pennsylvania, and Washington, D.C., the Council met on September 12 in a defining moment in world history. In a rare departure from the norm, all Members unanimously adopted Resolution 1368 (2001).⁵² By that text, the Council condemned the terrorist acts and expressed need to combat all forms of terrorism in accordance with Charter responsibilities.⁵³ The Council emphasized that those responsible for aiding, supporting, or harboring the perpetrators, organizers, and sponsors of such acts would be held accountable, and expressed urgency to take all necessary steps to respond to the terrorist attacks in accordance with its responsibilities under the Charter.⁵⁴

In citing its rights pursuant to self-defense under the Charter of the United Nations, the United States declared they were waging a campaign against international terrorism, targeting those who harbored and supported the terrorists as well as the terrorists themselves.⁵⁵ On September 15, 2001, the United States named Osama bin Laden as the prime suspect for the atrocities of September 11.⁵⁶ The Taliban expressed condolences for the terrorist attacks, denied the involvement of Osama bin Laden, and affirmed their refusal to abide by Security Council resolutions. Repeated efforts ensued, including by Pakistan, which also accepted that there was conclusive evidence linking bin Laden to the attacks, who urged them to hand him over.⁵⁷ On October 7, 2001, the United States-led coalition launched air strikes against Taliban targets in Afghanistan. Air strikes and occasional ground operations continued through the end of the year.⁵⁸ Despite pressure from the new interim government in Kabul to stop the bombing, the United States continued the air strikes into the end of the year, refusing to stop until Osama bin Laden and his Al Qaeda supporters are brought to justice.⁵⁹

In order to heighten efforts aimed at countering terrorism, on September 28, 2001, pursuant to Resolution 1373, the Council also adopted comprehensive strategies in order to combat international terrorism, including the establishment of the Counter-Terrorism Committee (CTC) for the purpose of monitoring its implementation and goals.⁶⁰ This

49. *Id.*

50. *Id.*

51. *Id.*

52. S.C. Res. 1368, U.N. SCOR, 56th Sess., 4370th mtg., U.N. Doc. S/RES/1368 (2001).

53. *Id.*

54. *Id.*

55. See Afghanistan, *supra* note 22, at 6.

56. *Id.*

57. *Id.*

58. *Id.*

59. Zeleny, *supra* note 43, at C3.

60. S.C. Res. 1373, U.N. SCOR, 56th Sess., 4385th mtg., at 1, U.N. Doc. S/RES/1373 (2001).

resolution really lays a foundation of action for the international community. Provisions include measures for suppressing the financing of terrorism and improving international cooperation in counter-terrorism. By its terms, it bans providing a safe haven for terrorists and it requires that by December 27, 2002 all countries have to provide reports on the steps they have taken to implement the resolution.⁶¹ Specifically, it has implications with respect to regulations and the monitoring of certain countries.

Through the adoption of Resolution 1377 on November 12, the Council declared international terrorism to be one of the most serious threats to international peace and security in the twenty-first century.⁶² It called on all states to expand their efforts to eliminate international terrorism. Pursuant to this text, the Council stressed that understanding among civilizations and adequately dealing with regional conflicts and a broad range of global issues would contribute to international cooperation, which was necessary to effectively solve the problem of international terrorism.⁶³ States were also called on to become parties as soon as possible to the international conventions and protocols relating to terrorism, and to take urgent steps to fully implement Resolution 1373.⁶⁴

During the first ninety days following the endorsement of Resolution 1371, under which the CTC was formed to heighten the level of national governments counter-terrorism efforts, the CTC then issued guidance to states for submitting reports, published a directory of contact points to encourage global participation and cooperation, and selected independent experts to provide advice to the Committee.⁶⁵ The CTC has made its documents public and maintained a detailed website.⁶⁶ It has established a Directory of Contacts with Member States on counter-terrorism.⁶⁷ The CTC will continue to be a coordinating mechanism serving in a monitoring role, in order to raise awareness and global efforts of counter-terrorism.⁶⁸ The CTC's work will continue to help develop minimum international standards for counter-terrorism law.⁶⁹ During the end of 2001, the Council demonstrated readiness to respond to the growing concern of terrorism in order to maintain international peace and security.

C. THE MIDDLE EAST

1. *Israelis/Palestinians*

During 2001, the Council convened five times, to provide forums for Member States to discuss the deteriorating conditions in the West Bank and the Gaza, in addition to the continuing cycle of violence in Israel, which began in September 2000.⁷⁰ The Council

61. *Id.* at 3.

62. S.C. Res. 1377, U.N. SCOR, 56th Sess., 4413th mtg., at 2, U.N. Doc. S/RES/1377 (2001).

63. *Id.*

64. *Id.*

65. See Bruce Zagaris, *UN Security Council Hears Progress of Counter-Terrorism Committee*, 18 INT'L ENFORCEMENT L. REP. [forthcoming Mar. 2002].

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. On October 7, 2001, the members of the Security Council adopted resolution 1322 (2000) to express concern over the conflict that led to a number of deaths, mostly among the Palestinians. They reaffirmed that a lasting solution to the conflict must be made through an active negotiating process. See S.C. Res. 1322, U.N. SCOR, 55th Sess., U.N. Doc. S/RES/1322 (2000).

was unable to come to a consensus on any action, however, as the United States twice vetoed resolutions.⁷¹

In September 2001, the Security Council expressed concern regarding the deteriorating situation in the Middle East because of the failure to adhere to prior agreements.⁷² The conflict worsened throughout the year because of the excessive force used by Israeli occupying forces against Palestinian civilians.⁷³ Many of the killings were willful killings and targeted assassinations.⁷⁴ In addition to the violence, Israel imposed restrictions on the movements of persons and goods in and out of the Occupied Palestinian Territory, causing damage to the already volatile Palestinian economy.⁷⁵

Because the peace process has stalled and violence has escalated as the Israeli-Palestinian conflict enters its second year, much attention has been devoted to the situation. In March, through an open debate, many governments supported an international observer mission to the region. Most speakers criticized what they referred to as Israel's use of excessive force against Palestinian civilians.⁷⁶ Several speakers also condemned all acts of lawlessness and terrorism. Many speakers urged an end to Israel's economic blockade of Palestinian towns and its encirclement of villages with troops and tanks. Also in March, the United States vetoed a draft resolution expressing the Council's goal of setting up an observer force.⁷⁷ To justify the veto decision, the United States reasoned that the resolution ignored the basic need to have the agreement of both parties. The United States would have supported the text if it had called for an end to violence and if it implemented all agreed commitments, including the agreements reached at Sharm el-Sheikh.⁷⁸

Again in August, the Council held another open debate on the issue. The meeting stressed that the implementation of the recommendations contained in the Mitchell report is the only viable path towards ending the violence in the Middle East and reviving the peace process.⁷⁹ In the August meetings, many speakers continued to support the establishment of an international observer force in the Middle East.⁸⁰ Others criticized the further escalation of violence, Israeli extrajudicial assassinations, and the occupation by Israeli authorities of Orient House and other Palestinian institutions in East Jerusalem. The Islamic Conference pushed the Council to take urgent measures to protect Palestinians, to reinstate Palestinian institutions in East Jerusalem, and to lift restrictions imposed upon entry to the Al-Aqsa Mosque and other Muslim and Christian places of worship in the city.⁸¹

71. See Crucial Issues, *supra* note 14.

72. See Report of the Secretary-General, Question of Palestine: The situation in the Middle East, 56th Sess., U.N. Doc. A/56/642-S/2001/1100 [hereinafter Palestine].

73. *Id.*

74. *Id.*

75. *Id.*

76. See Crucial Issues, *supra* note 14.

77. *Id.*

78. *Id.*

79. That report was the product of a trip to the region by former United States Senator George Mitchell that was issued on May 21. The report included a call for an immediate ceasefire, a renunciation of terrorism and a resumption of peace talks and rebuilding confidence and trust between Israel and the Palestinian Authority. It also urged a freeze on construction of settlements, a lifting of economic restraints on Palestinian areas, a limit to Israel's use of lethal force against Palestinians, as well as for the Palestinian Authority to prevent Palestinian attacks on Israelis. See Palestine, *supra* note 72.

80. See Crucial Issues, *supra* note 14.

81. *Id.*

On December 14, the Council held a meeting, but again failed to adopt a draft resolution by which it would have condemned all acts of extrajudiciary executions, excessive use of force, and wide destruction of property and looked to the establishment of a monitoring mechanism to help the parties.⁸² The draft received twelve votes in favor with two abstentions (Norway, United Kingdom), but was vetoed by the United States' negative vote.⁸³

A lack of progress highlights the situation in the Middle East in 2001. No agreement was reached on the deteriorating situation in the Middle East as the death toll continued to escalate in the cycle of violence that began in September 2000.⁸⁴ More than forty speakers participated in Open Council debates. Most of those speakers criticized what they called illegal and inhumane acts by Israel, with some condemning all acts of lawlessness and terrorism. Two draft resolutions that proposed the establishment of an observer force and a monitoring mechanism, respectively, were not adopted in separate meetings, due to the negative vote of the United States.

D. AFRICA

During 2001, the Council has had 83 formal meetings on Africa.⁸⁵ In Africa, there are numerous conflicts, which have led to worsening humanitarian situations. In the midst of these problems, the Council emphasized the development of peacekeeping, the implementation of ceasefire agreements, the control of illicit trade in resources and arms, and the development of peace building. Since the last update of *The International Lawyer*, the Council has continued to closely monitor Sierra Leone.

1. Sierra Leone

Sierra Leone had been reeling in conflict since March 1991, when fighters of the Revolutionary United Front (RUF) launched a war to overthrow the government. In October 1999, the Council's Resolution 1270 (1999) established the United Nations Mission in Sierra Leone (UNAMSIL) to aid with implementation of the Lomé (Togo) Peace Agreement between the government of Sierra Leone and the RUF, which was signed on July 7, 1999.⁸⁶ Because of ongoing instability, the Security Council increased the authorized strength of UNAMSIL several times.⁸⁷ The central objective of the deployment of UNAMSIL throughout the country is still to facilitate the Government's efforts to restore State authority, as well as law and order in the entire territory of Sierra Leone.⁸⁸ Moreover, the Council mandated UNAMSIL to support elections in Sierra Leone, which are scheduled to take place on May 14, 2002.⁸⁹

During 2001, the Council took up the report of the Panel of Experts it established last July to collect information on violations of the arms embargo, as well as on the connection between the trade in diamonds and the arms trade.⁹⁰ The Panel discovered that sanctions

82. *Id.*

83. *Id.*

84. See Palestine, *supra* note 72.

85. See Crucial Issues, *supra* note 14.

86. S.C. Res.1270, U.N. SCOR, 54th Sess., U.N. Doc. S/RES/1270 (1999).

87. See Report of the Secretary-General, Twelfth report of the Secretary-General on the United Nations Mission in Sierra Leone, 56th Sess., U.N. Doc. S/2001/1195 (Dec. 13, 2001).

88. *Id.*

89. *Id.*

90. See Crucial Issues, *supra* note 14.

involving weapons and diamonds were being violated.⁹¹ The Panel also made broad recommendations, including calls for a global certification scheme for diamonds, an embargo on weapons exports from specific producer countries, a travel ban on senior officials from Liberia, and creation within the United Nations Secretariat of the capacity for the ongoing monitoring of Security Council sanctions.⁹²

The Council met to discuss the imposition of new measures that would stop the illicit trade of Sierra Leone diamonds and the flow of illegal weapons into that country.⁹³ They also noted the need to effectively address the role of Liberia and other countries in fuelling the conflict. Liberia was among a number of countries named in the report that expressed disagreement with its findings.⁹⁴

On March 8, the United Nations High Commissioner for Refugees requested the Security Council to strengthen UNAMSIL to enable the return of refugees and general stability.⁹⁵ In March of 2001, the Council extended UNAMSIL's mandate for six months, and increased its military component.⁹⁶ By its unanimous adoption of Resolution 1346 (2001), the Council also demanded that the RUF and other military groups immediately cease their reported abuses of human rights, specifically the harassment and forced recruitment of adults and children for fighting and forced labor.⁹⁷

In June of 2001, Oluyemi Adeniji, the Special Representative of the Secretary-General and head of UNAMSIL, brought news to the Council that the peace process in Sierra Leone had seen changes.⁹⁸ The Mission had solidified its contacts with the RUF, while continuing to work together with the government of Sierra Leone.⁹⁹ Consultations with the parties had included delicate discussions on the Kambia district, which had led to considerations of resuming disarmament, demobilization, and reintegration of the RUF in that district.¹⁰⁰ Progress had been made in other aspects of the peace process, as well, and most roads in the country were now open, which had helped spur the resumption of humanitarian operations.¹⁰¹

Through the adoption of Resolution 1370 (2001), the Council extended the UNAMSIL for an additional six months, and again called for a stop to human rights abuses and other ceasefire violations of the RUF.¹⁰² As the illegal diamond trade continued to influence such violations, on December 19, 2001, the Council decided to extend, for eleven months beginning on January 5, 2002, the prohibition on the import of Sierra Leone rough diamonds, except those controlled by the Government under the Certificate of Origin regime, by unanimously adopting Resolution 1385 (2001).¹⁰³

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. See Tenth Report of the Secretary-General on the United Nations Mission in Sierra Leone, U.N. SCOR, 56th Sess., U.N. Doc. S/2001/627 (June 25, 2001).

96. *Id.*

97. S.C. Res. 1346, U.N. SCOR, 56th Sess., 4306th mtg., U.N. Doc. S/RES/1346 (2001).

98. See Palestine, *supra* note 72.

99. *Id.*

100. *Id.*

101. See Eleventh Report of the Secretary-General on the United Nations Mission in Sierra Leone, U.N. SCOR, 56th Sess., U.N. Doc. S/2001/857 (Sept. 7, 2001).

102. S.C. Res. 1370, U.N. SCOR, 56th Sess., 4374th mtg., U.N. Doc. S/RES/1370 (2001).

103. S.C. Res. 1385, U.N. SCOR, 56th Sess., U.N. Doc. S/RES/1385 (2001).

The peace process in Sierra Leone has made progress this past year. However, this progress must be met with guarded optimism. As a result of the deployment of the UNAMSIL, important steps have been made to provide a more secure environment within the country. At the same time, more steps need to be taken to ensure sustainable peace and stability.¹⁰⁴ While the future elections offer an opportunity to enhance the peace process, there may be problems if the electoral process is not seen as credible.¹⁰⁵ And even if the electoral process is successful, this will not alone solve the crises of the country.¹⁰⁶ Among some of the issues that will require close attention in the future include the ability of the Government to assume responsibility for the country's security, rehabilitating its infrastructure, and resettling internally displaced persons.¹⁰⁷

E. Kosovo

Throughout the 2001 year, the Security Council met eleven times on Kosovo.¹⁰⁸ These meetings focused on progress towards provisional self-government and inter-ethnic relations. Province-wide elections were staged in November 17, 2001, with participation by all ethnic groups.¹⁰⁹ Presently, United Nations Interim Administration Mission in Kosovo (UNMIK) exercises interim legislative and executive powers, as well as administering the judiciary.¹¹⁰ Additionally, the KFOR, a force led by the North Atlantic Treaty Organization (NATO), is also there to provide international security assistance.¹¹¹

During 2001, the Mission had continued to work to create inclusive local administrative structures. The UNMIK had also made significant progress in strengthening the rule of law.¹¹² The police service had improved, and despite threats and intimidation, personnel in that service were largely performing in a professional manner. The UNMIK's initial focus on emergency reconstruction experienced a shift to economic development and the promotion of private sector enterprise.¹¹³ Additionally, the other primary activities of the UNMIK include preparing for the Kosovo-wide elections and encouraging the participation of the Kosovo Serb community in this process in order to achieve the goal of an all-inclusive provisional government.¹¹⁴

With Mr. Guéhenno's briefing, on February 13, province-wide elections were about to be staged. "Most Council members agreed with him that it was essential to define the mandate and composition of a Kosovo-wide assembly prior to the election and to ensure participation of all ethnic groups."¹¹⁵ "However, ethnic violence, especially the activity of Albanian extremists, continued to be an obstacle to such participation and, on March 16,

104. See Palestine, *supra* note 72.

105. *Id.*

106. *Id.*

107. *Id.*

108. See Crucial Issues, *supra* note 14.

109. *Id.*

110. See S.C. Res. 1244, U.N. SCOR, 54th Sess., 4011th mtg., U.N. Doc. S/RES/1244 (1999). This resolution established the United Nations Interim Administration Mission (UNMIK) in Kosovo.

111. See Crucial Issues, *supra* note 14.

112. See Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, 56th Sess., U.N. SCOR, U.N. Doc. S/2001/926 (Oct. 2, 2001) [hereinafter Kosovo].

113. *Id.*

114. *Id.*

115. See Crucial Issues, *supra* note 14.

the Security Council issued a presidential statement urging all political leaders in the province to condemn such activity, while increasing their efforts to create inter-ethnic tolerance.¹¹⁶

Despite several obstacles, including the continued inter-ethnic violence in the former Yugoslav Republic of Macedonia in April, the UNMIK still moved forward with its priorities of holding elections and government planning.¹¹⁷ Other key objectives also emphasized were Kosovo Serb participation, the maintenance of law and order, and the development of public finances.¹¹⁸ The Council met several times during the summer to address the challenges of the political engagement of the Kosovo Serb community, the registration process, and the conditions needed for free and fair elections.¹¹⁹ The Council was concerned because of uncertainty in Serb participation, so in an October presidential statement “it called on all women and men of Kosovo to vote” and repeated the call to vote again in November.¹²⁰

After the elections were held successfully on November 17, the reactions by the Council were overwhelming positive.

Hédi Annabi, Assistant Secretary-General, Department of Peacekeeping Operations, told [the] Council that the election process . . . would provide a solid basis for the institutions of provisional self-government. All parties had largely adhered to electoral rules and infringements had been adjudicated in a timely manner. Kosovo Serb participation was patchy, but that was due in part to an intimidation campaign in northern [Kosovo], led by those Kosovo Serbs who were against participation.¹²¹

While the elections were generally successful, the future of Kosovo is still not completely certain. Behind the accomplishments are also onerous tasks that still remain unresolved. Political parties were seeking independence over a multi-ethnic society, and discrimination and extremist violence are challenges yet to be overcome. So, while the election process marks a new beginning for Kosovo, it does not determine its final recovery.

F. EAST TIMOR

The national elections on August 30, 2001 and plans for independence for May 20, 2002 were seen triumphantly as a model for peacekeeping and post-conflict peace building for the United Nations’ operations in East Timor, under the Organization’s Transitional Administration in East Timor (UNTAET).¹²² At the same time, however, the eight meetings on the topic concluded with caution that the achievements of the international community may be threatened without a proper exit strategy. Because of this risk, there may be continued United Nations presence.¹²³

Other developments include the Security Council’s extension of the mandate of UNTAET until January 31, 2002. The Council additionally urged the international community,

116. *Id.*

117. *Id.*

118. *Id.*

119. *See id.*

120. *Id.*

121. *Id.*

122. *See* Report of the Secretary-General on the United Nations Transitional Administration in East Timor, 57th Sess., U.N. SCOR, U.N. Doc. S/2002/80 (Jan. 17, 2002).

123. *See* Crucial Issues, *supra* note 14.

through Resolution 1338 (2001), to aid in financial and technical assistance, to help to develop the new nation. Months later in April, the situation was carefully reviewed again.¹²⁴ While there had been an increase in the number of refugees returning home from West Timor, there were an estimated 100,000 refugees that remained in West Timor.¹²⁵ At that time, Hedi Annabi, the Assistant Secretary-General, Department of Peacekeeping Operations, commented that these refugees lacked access to information regarding the conditions in East Timor.¹²⁶ There were concerns over unresolved issues of justice and reconciliation, security, and the prospects for development.¹²⁷

After the monumental August elections were staged in an uncontested manner, the results were well received by the Council in a September presidential statement.¹²⁸ "In a subsequent briefing, Jean-Marie Guéhenno, Under-Secretary-General for Peacekeeping Operations, reported that the elections had been held with participation from more than 91 percent of the electorate. There was not a single confirmed allegation of a breach of the Electoral Offences Regulation."¹²⁹

"Delegations overwhelmingly welcomed the successful outcome of the elections, congratulating the East Timorese people for their political maturity; and UNTAET, under the leadership of Sergio Vieira de Mello, for the manner in which the elections were organized and conducted."¹³⁰ Many speakers agreed that it was, indeed, a wonderful moment in the history of United Nations peacekeeping operations. Others called on all political parties to respect the election outcome, work together to draft the constitution, and prepare East Timor for independence.¹³¹ On October 31, in its final meetings of the year on the topic, the Council, through a presidential statement, endorsed the recommendation by the Constituent Assembly of East Timor that independence be declared on May 20, 2002.¹³² In the same statement, it also endorsed the Secretary-General's plans for modifying the mission's size and configuration in the months prior to independence, agreeing that a successor mission, headed by the Special Representative of the Secretary-General, Sergio Vieira de Mello, would involve military, civilian police, and civilian components. Among those would be experts providing assistance to the emergent East Timorese State.¹³³ The mission would gradually downsize within two years following independence.¹³⁴

For the future, there are remaining tasks and problems to be resolved.¹³⁵ In a briefing to the Council, Mr. Vieira de Mello outlined that one of the most difficult tasks was assisting the Timorese in drafting budgets fitted to limited means, as the international presence was reduced. "The support provided by the current mission, with its budget roughly ten times that of the national one, could simply not be sustained after independence."¹³⁶ Therefore,

124. See S.C. Res. 1338, U.N. SCOR, 56th Sess., U.N. Doc. S/RES/1338 (2001).

125. See Report of the Secretary-General on the United Nations Transitional Administration in East Timor, 56th Sess., U.N. SCOR, U.N. Doc. S/2001/983 (Oct. 18, 2001).

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. See Kosovo, *supra* note 112.

135. *Id.*

136. *Id.*

East Timor's economic development will continue to require significant assistance from the international community following independence.¹³⁷

Some commentary on the subject of the United Nations presence in both Kosovo and East Timor examines whether international organizations should engage in "International Territorial Administration" (ITA). For example, some scholars question whether the ITA should be used as a mechanism to promote and ensure local democracy and whether their objectives can truly be met.¹³⁸ Particularly, in the cases of Kosovo and East Timor, the ITA operates to replace existing authority to varying degrees and becomes a model for good governance, rather than reacting to problems due to poor governance. Acting in this capacity, some argue that in exercising territorial administration, international actors may develop their own additional objectives.¹³⁹

III. The International Law Commission

Since last year's update in *The International Lawyer*, the International Law Commission (ILC) held its fifty-third session at the United Nations Office at Geneva¹⁴⁰ from April to June and July to August for twelve weeks. Among the highlights at the session included the adoption of the draft articles, on second reading, on responsibility of states for internationally wrongful acts, as well as the consideration of the draft articles on prevention of transboundary harm from hazardous activities. Other important projects considered include reservations to treaties and diplomatic protection. Also noteworthy is the expiration of the term of office of the thirty-four members of the ILC for the 1997–2001 quinquennium at the end of 2001, and the election of the members of the Commission for a five-year term beginning on January 1, 2002, which took place at the fifty-sixth session of the General Assembly on November 7, 2001. The members of the Commission were elected by the General Assembly.¹⁴¹

A. INTERNATIONAL STATE RESPONSIBILITY

For a number of years, the International Law Commission (ILC) has put forth a great deal of effort in order to produce articles codifying rules of state responsibility.¹⁴² In the fifty-third session, the ILC continued consideration of the report of the Drafting Committee on state responsibility and adopted the draft articles on responsibility of states for international wrongful acts.¹⁴³ The Commission decided to recommend to the General Assembly that it take note of the draft articles on responsibility of States for internationally wrongful acts in a resolution.¹⁴⁴ It further recommended to the General Assembly that it

137. *Id.*

138. Ralph Wilde, *From Danzig to East Timor and Beyond: The Role of International Territorial Administration*, 95 AM. J. INT'L L. 583, 605 (July 2001).

139. *Id.* at 600–02.

140. See <http://www.un.org/law/ilc/index.htm>.

141. 2001 Election of the International Law Commission, available at <http://www.un.org/law/ilc/2001election.htm>.

142. Sean D. Murphy, *Contemporary Practice of the United States Relating to International Law*, 95 AM. J. INT'L L. 626, 626 (July 2001).

143. See International Law Commission, *Fifty-third Session*, available at <http://www.un.org/law/ilc/sessions/53/53sess.htm>.

144. International Law Commission, *Summary of the Commission's work done at its fifty-third session*, available at <http://www.un.org/law/ilc/sessions/53/53sess.htm>.

consider convening an international conference of plenipotentiaries to continue work of the draft articles on responsibility of States for internationally wrongful acts, so that in the future a convention can be adopted on the topic.¹⁴⁵

B. RESERVATIONS TO TREATIES

In its fifty-third session, the ILC continued working on Reservations to Treaties, under the Chairmanship of Special Rapporteur Alain Pellet of France. The Commission considered topics that were not discussed in prior years. In its fifty-third session, the Commission adopted twelve draft guidelines pertaining to the formulation of reservations and interpretative declarations.¹⁴⁶ In addition, the Commission also referred thirteen draft guidelines dealing with form and notification of reservations and interpretative declarations to the Drafting Committee.¹⁴⁷ In pushing ahead, the Commission found that conditional interpretative declarations are subject to the same legal regime as reservations.¹⁴⁸ Should there be a confirmation made pertaining to both the effects of reservations and of conditional interpretative declarations, the Commission may not specifically include in its draft guide to practice draft guidelines on conditional interpretative declarations.¹⁴⁹ The cumulative effect of these measures is to aid governments with compliance of reservations provisions.

C. INTERNATIONAL LIABILITY FOR INJURIOUS ACTS

In the fifty-first session, the issue of international liability pending the second reading of the draft articles on the prevention of transboundary damage from hazardous activities was deferred for a later time.¹⁵⁰ At the fifty-second session, governments were requested to comment on ILC draft articles pertaining to this issue.¹⁵¹ At its fifty-third session this past year, the Commission had before it the comments and observations of the governments.¹⁵² Based on the Commission's completion of the second reading on the topic, it decided to recommend to the General Assembly the elaboration of a convention by the Assembly on the basis of the draft articles on prevention of transboundary harm from hazardous activities.¹⁵³

D. DIPLOMATIC PROTECTIONS

At its fifty-third session, the Commission considered the topic of diplomatic protection. Specifically, the Commission considered the question of continuous nationality and transferability of claims that were not dealt with in the preceding session.¹⁵⁴ In the fifty-third

145. *Id.*

146. *Id.*

147. *Id.*

148. See *supra* note 144.

149. *Id.*

150. See International Law Commission, *Summary of the Commission's work done at its fifty-first session*, available at <http://www.un.org/law/ilc/sessions/51/51sess.htm>.

151. See International Law Commission, *Summary of the Commission's work done at its fifty-second session*, available at <http://www.un.org/law/ilc/sessions/52/52sess.htm>.

152. See *supra* note 150.

153. *Id.*

154. See *id.*

session, the Commission referred draft articles pertaining to questions of continuous nationality and transferability of claims and the exhaustion of local remedies to the Drafting Committee.¹⁵⁵ The Commission also established informal consultations to consider the issue of continuous nationality and transferability of claims.¹⁵⁶ In the session, the Commission also requested comments from governments regarding exceptions that may be made to the continuous nationality rule, including the conditions under which exceptions would be applicable.¹⁵⁷

155. *Id.*

156. *See supra* note 144.

157. *Id.*

