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131st IPU ASSEMBLY AND RELATED MEETINGS

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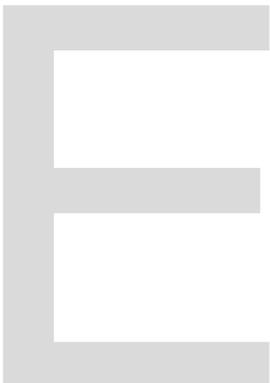
Standing Committee
on Democracy and
Human Rights

C-III/131/M
18 July 2014

International law as it relates to national sovereignty, non-intervention in the internal affairs of States and human rights

***Explanatory memorandum submitted by the co-Rapporteurs,
Mr. Ali Jassim Ahmad (United Arab Emirates) and Mr Philippe Mahoux (Belgium)***

1. Compared to many items chosen for debate by the Assembly's Standing Committees, which concern specific problems that are currently high on the international agenda, the theme to be discussed at the 131st Assembly by the Standing Committee on Democracy and Human Rights seems fairly theoretical, even doctrinal, in nature. At its 128th Assembly, the IPU adopted a resolution on a related theme – The responsibility to protect – but the topic we are dealing with here is far more general in scope. It concerns the fundamentals of international relations and the basic conditions of international peace and security. More specifically, it is meant to address the interface and, according to some, possible tension between the international commitment to protect human rights and some more traditional principles of interaction between States.
2. It is perhaps unfortunate that such a vast and complex topic was chosen for discussion in the one instance in which only six months are available for the preparation, discussion and adoption of a resolution by the Assembly. In this particular instance, a preliminary debate would certainly have been useful. However, the co-Rapporteurs were fortunate to receive written contributions from 12 Member Parliaments, which raised many interesting issues.
3. The co-Rapporteurs also had a working session in Geneva on 6 and 7 June 2014. Following a preliminary discussion, in which they stated their main concerns, they met with two experts: Mr. Ibrahim Salama, Director of the Human Rights Treaties Division of the Office of the United Nations High Commissioner for Human Rights, and Mr. Marcelo Kohen, Professor of International Law at the Graduate Institute of International and Development Studies in Geneva. These discussions helped to clarify a number of issues and to identify some key elements to be included in the draft resolution. At their last meeting, the co-Rapporteurs discussed in detail a first draft and, thanks to the constructive spirit in which the whole two-day session was conducted, agreed on how to complement and adapt it. The final draft to be submitted to IPU Members was approved by them later on in writing, with some further amendments. The co-Rapporteurs wish to thank the IPU Secretariat for the invaluable support provided in setting up and during their meeting in Geneva.
4. The draft resolution presented by the co-Rapporteurs does not claim to be exhaustive. That is why the co-Rapporteurs suggest in their final recommendation to continue the debate and to set up a committee in the IPU to prepare a major political declaration, comparable to the IPU's Universal Declaration on Democracy for example, which should aim to express a new parliamentary consensus on the foundations of peace and security in the world.



5. The co-Rapporteurs agreed from the outset that their aim was not legal theory or academic analysis and that the resolution should focus on the role of parliaments.
6. As a result, the draft resolution states or reaffirms, rather elliptically, a number of fundamental principles, such as the principle of the sovereign equality of States, the importance of the rule of law both at the national and international levels and the universal nature of human rights, which is the basis of their protection by international law.
7. The draft resolution underscores the prime responsibility of each State in implementing international human rights law at the national level, and especially the role of parliaments in adopting the necessary legislation and overseeing its application through a strong national system for the protection of human rights, which requires in particular an independent judiciary and an active role for civil society. The text specifically draws attention to the importance of ensuring equal rights for men and women. It also underscores the responsibility of occupying States for the protection of human rights in the territories under their control.
8. However, the protection of human rights is also the responsibility of the international community. The draft resolution rejects unilateral interpretations of international human rights law, both at home and in an international context, as well as the abuse of international human rights law in international relations to pursue other interests. It stresses the important role of the monitoring mechanisms foreseen in international human rights law instruments and of the Universal Periodic Review mechanism of the UN Human Rights Council, which constitute a safeguard in this respect. It therefore calls for such mechanisms to be strengthened and especially for greater participation of parliaments in them.
9. The draft resolution affirms that the principle that States should refrain from the threat or use of force against each other remains valid, even if the purpose is to uphold or ensure respect for human rights. Only the United Nations acting under its Charter has the authority to decide such action. But the United Nations, and especially the Security Council, should be reformed to make it more effective and to lend greater legitimacy to its decisions.
10. The co-Rapporteurs also agreed that reprisals against another State on the basis of human rights considerations are only acceptable to the extent that they do not run counter to international law and, in any case, they should never have extra-territorial effects.
11. More generally, the text urges a cooperative, non-antagonistic approach to international relations and points out the crucial link between better international relations and the achievement of the Millennium Development Goals and the future Sustainable Development Goals.
12. Lastly, in view of the role of parliaments in the protection of human rights and the development of the rule of law, both nationally and internationally, the draft resolution calls for increased cooperation between parliaments, the IPU and the United Nations.
13. The draft resolution, as presented, reflects the agreement we have been able to reach as co-Rapporteurs at this preparatory stage. There are some areas where we did not reach agreement on specific language, e.g. on the role of stronger, especially judicial, implementation mechanisms in international human rights law, such as those that exist in some regional human rights conventions. The issue of the International Criminal Court, which was raised in several written contributions by Members, was also left out for this reason. We nevertheless hope that our draft provides a useful basis for discussion at the 131st Assembly and look forward to receiving Members' amendments.