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Follow-up and implementation of the Vienna Declaration and Programme of Action

Written statement* submitted by Liberation, a non- governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[8 February 2013]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

The United Nations and its adherence to the Vienna Declaration and Programme of Action in stemming the violation of the peremptory norm “jus cogens” - the case of Yemen*

In its Declaration and Programme of Action, the Vienna world conference in 1993 reaffirmed the solemn commitment of all States to fulfil their obligations in the promotion of all human rights, for all, in accordance with the Charter of the United Nations, international law and other international human rights instruments. Moreover, it reaffirmed the United Nation's commitment to respect international law and International human rights instruments, and to prevent conflict with a peremptory norm of International Law and to respect the International Human Rights Instruments which includes the right to self-determination - accepted and recognised by the international community of states as a norm from which no derogation is permitted.

The deteriorated situation in some crises in the LDCs exemplified the absence of respect for previously-agreed commitments, the breaching of Vienna Declaration and Programme of Action and the inability of United Nation's bodies to meet their performance in conformity with the Vienna Declaration and Programme of Action, mainly in terms of respecting the peremptory norm of general international law “jus cogens”, and of respecting the international human rights instruments.

Consider the impact of the breach of international law in the South-North Yemen case, as an example of the risks associated with neglecting the peremptory norms of international law. After the two UN member States in the south Arabian Peninsula, namely the Yemen Arab Republic and the People's Democratic Republic of Yemen (DRY) which were both internationally recognised and there was mutual recognition, the consequences of their declaration of the Unity Agreement in 1990 was replaced with occupation of the South by North and led to tension and instability in the region because of breaching “jus cogens”.

Before the World Conference on Human Rights in 1993, the two states witnessed a historical precedent in violating a peremptory norm of general international law and other International Human Rights Instruments through the Declaration of the Unity Agreement:

Article 52 of the Vienna Convention on the Law of Treaties 1969 stated: “A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations”,¹ and as Article 53 stated: “A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law...”.²

It would appear that, the 1990 Agreement should be declared void because it was signed under the titles of the two de facto party leaders, and was not made by referendum. It conflicts with jus cogens, and also conflicts with Article 1 in the two international covenants, which are considered as a peremptory norm of general international law. The 1990 agreement should be considered as void because it violates jus cogens.

* The International Organisation for Least Developed Countries (IOLDCs), an NGO without consultative status, also shares the views expressed in this statement.

¹ Vienna Convention on the Law of Treaties 1969.

² Vienna Convention on the Law of Treaties 1969.

The content of the Agreement is self-explanatory. The UN has neglected its obligations under Article 10 of its Treaty Guide because it accepted the agreement between the two states without examining whether all requirements of the Treaty Guide were met.

One year after the World Conference on Human Rights in 1993, there was another breach of both the Vienna Declaration and Programme of Action, and of a peremptory norm of general international law:

Article 60 stated: " 1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty..."³

The Yemen Arab Republic breached the Agreement by failing to deliver the agreed transitional period as required in accordance with Article 60 of the 1969 Convention, followed by declaration of the war against the South. President Ali Salem Albidh invoked the violation of the Agreement in 1994 and announced the re-establishment of the DRY.

In support of the invocation and the re-establishment of the DRY, the meeting of the Foreign Ministers of the six states of the Gulf Co-operation Council (GCC) in June 1994 stated "...the Council welcomes Yemeni Unification if it is made based upon the agreement of the two independent states: the Democratic Republic of Yemen and the Yemen Arab Republic. Accordingly, the unification shall not continue unless there is agreement between the two parties. However upon the declaration of one party to return to its previous situation to establish a Democratic Republic of Yemen...."⁴

The Security Council Resolution 924 and 931 of 1994 reminded the two state parties: "...their political differences cannot be resolved through the use of force and urges them to return immediately to negotiations which will permit a peaceful resolution of their differences and a restoration of peace and stability." It decided to: "remain actively seized of the matter".

The failure of the UN, particularly the Security Council, the General Secretary, the Human Rights Council and the High Commissioner for Human Rights in meeting their performance based on Vienna Declaration and Programme of Action resulted in the deterioration of the human rights situation and left the door open for violations. Since 1994 the people of the South have suffered injustice and gross human rights violations, including, killings and arrests of thousands of peaceful demonstrators, and bombings which took place in Al Dali Aden Abyan, shabwah, Lahij and Hadramout, which can be categorised as crimes against humanity.

Since 2007 the Southern people's distress has resulted in the daily organisation of peaceful demonstrations which multiplied and culminated into millions of peaceful protests, the last of which took place in Aden, Mukalla and other Southern governorates, on 27-28 January 2013 during the visit of the Members of the Security Council to Yemen, calling for the restoration of their sovereign state.

During January 2013 a poll took place. Some 20,000 people voted in the South: 90.5% for the restoration of the Southern state, 6.24% for unity and 3.25% for a federal arrangement.⁵

The indicators on the ground said that, the ignorance of the UN Security Council towards millions of Southern protestors, has led to frustration and despair in the local populace, and could turn to the escalation of tension. Therefore, the Council should take over their responsibility to overcome both the lack of early warning mechanisms and of preventive advocacy and diplomacy in order to avoid the imminent catastrophe resulting from the

³ Vienna Convention on the Law of Treaties 1969.

⁴ GCC Foreign Ministers meeting Abha, Saudi Arabia, 45 June 1994.

⁵ Aden Algad, 7 February 2013.

violation of peremptory norm of general international law, and international human rights instruments.

Only by respecting the peremptory norms of general international law and other International Human Rights Instruments, and by a reassessment of the complicated and chronic South-North conflict based on the above-mentioned facts, the UN bodies could then play a key role in meeting the Vienna Declaration and Programme of Action and in opening the door widely for promoting human rights, conflict prevention, post conflict and peace building, eradicating terrorism, and achieving sustainable development, and enabling the two neighbouring states to work side by side in mutual cooperation within the frame work of GCC, and with the international community.

Given the foregoing, we recommend that the Human Rights Council should deliver its responsibility to resolve the crisis by:

- Establishing a working group to consider the application of jus cogens to the declaration of the Unity Agreement between the PDRY and the YAR.
- Urging the UN Secretary General, in accordance with resolutions 924 and 931 to provide a framework and a timescale for negotiations between south and north Yemen for dissolution the two states.
- Urging the GCC to set up a working group to deliver agreed geopolitical arrangements with a view to admitting the two states into the membership of the GCC following the dissolution between the two states.
- Appointing an International Investigation Commission to investigate human rights violations in the South.
- Designating a Special Rapporteur on terrorism for a mission to the Yemen.
- Urging the High Commissioner to organise preventive advocacy to avoid more violations.
