TRANSFORMATION OF RUSSIAN LEGISLATION ON CIVIL PROTECTION IN EMERGENCIES CAUSED BY THE SPREAD OF DANGEROUS INFECTIOUS DISEASES

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Abstract
The paper deals with topical issues of the Russian State System for Prevention and Response to Emergencies in the context of the COVID-19 coronavirus pandemic. Some aspects of a possible legislation reform in the field of protection of the population and territories in emergencies caused by the spread of dangerous infectious diseases are investigated. The authors consider the issues of limiting the constitutional rights and freedoms of citizens in high-alert and emergency situations. Activities to protect the rights and freedoms of citizens in the context of a pandemic are based on article 55 of the Constitution, according to which the rights can be restricted by law only to the extent necessary to protect the health of citizens. Based on the analysis of changes in legislation in this area, the authors substantiate proposals for improving activities in the field of protection of the population and territories in emergencies, as well as expanding the functions of the Security Council of the Russian Federation.

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I. Introduction

The coronavirus pandemic has raised questions for the leadership of the Russian Federation not only about the effectiveness of the health care system, but also about the activities of the entire national security system of the state. And if the economic consequences of the COVID-19 virus pandemic (in this case, one should assess the restrictions during the first and second waves of the epidemic) are quite clear, i.e. medium-sized and small businesses will suffer the most, the performance of the national security system has yet to be evaluated.

On the one hand, the pandemic has prompted the modernization of the legislation in general, as well as the identification of needs for such a modernization. This can give an impetus to law-making in various spheres of life. In the first half of 2020, we witnessed rapid changes in legislation related to the civil protection given the need to deal with the COVID-19 pandemic consequences.

On the other hand, changes in public relations during the pandemic require new legal norms. Thus, the coronavirus has changed the mass perception of norms of behavior in the public space. This indicates that a new sphere of rule-making is currently being formed, i.e. regulation of public relations in emergencies characterized by uncertainty and unpredictability of their development.
II. Prerequisites for the emergency law transformation

The most important events that have already taken place in the twenty-first century, as well as the analysis of the main trends in the development of modern society, which are becoming more and more clearly manifested in recent years, indicate that this century will go down in the history of civilization as a period of global changes and radical transformations. A striking example is the Fourth industrial revolution and the subsequent course towards digitalization of all spheres of life of the state and the population, including security. The scale, depth and significance of these changes are already unprecedented and have no analogues in the world history.

Most recently, the legislative initiative in our country has mainly been related to the coronavirus. We can even say that there is a new special regulatory COVID-regulation. The Federation Council has set up a working group to monitor coronavirus legislation. The tasks of the working group include collecting, analyzing and summarizing information about the state of the Russian legislation in terms of compliance with the changing conditions of the state’s life, preparing proposals for its improvement aimed at ensuring the functioning and further development of the economy and social sphere under new conditions. In the development of Federal legislation, local legal regulations are being changed. The issues of regulating the rights and obligations of citizens have become more relevant than ever.

A special feature of the high-alert regime introduced in most territories of the Russian Federation is the granting of special powers to restrict the rights and establish the duties of citizens and organizations.

The legal basis for such measures is the Federal Law “On Protection of the Population and Territories from Natural and Man-Made Emergencies”, which defines the mode of operation of the governing
bodies and forces of the Russian State System for Prevention and Response to Emergencies (RSChS).

The legislation on the protection of the population and territories from emergencies does not explicitly divide emergencies and the responsibilities of particular bodies. The EMERCOM of Russia and the entire system of emergency situations is aimed at fighting the consequences of fires, accidents at industrial enterprises and other facilities, as well as the consequences of natural disasters. Still, our experience has shown that there might be other situations requiring a comprehensive approach and analysis.

According to the legislation, the RSChS functioning mode is the procedure for organizing the activities of the governing authorities and RSChS bodies. The heads of the Federal Executive authorities, state corporations, executive authorities of the constituent entities of the Russian Federation, local self-government bodies and organizations, governing the territory where such an emergency may arise or have already arisen, or being in charge of eliminating the consequences of the emergency, can issue a decree establishing one of the following modes of operation:

a) High alert — under the threat of emergencies;

b) Emergency mode — in response to emergencies and their consequences.

Given the specific situation, the relevant commissions for emergencies render a decision on the introduction of a particular RSChS operation mode.5

kharakter“ [Federal Law No 68-FZ of 21.12.1994 (as amended on 01.04.2020) “On protection of the population and territories from natural and man-made emergencies”]. Article 3648. Sobranie zakonodatel’stva Rossiiskoi Federatsii [SZ RF] [Russian Federation Collection of Legislation] 1994, Item 35. (In Russ.).

5 Postanovlenie Pravitelstva RF ot 30 dekabrya 2003 g. No 794 “O edinoy gosudarstvennoy sisteme preduprezhdения i likvidatsii chrezvychayennykh situatsiy” [Decree of the Government of the Russian Federation of December 30, 2003 No 794 “On the Russian State System for Prevention and Response to Emergencies”]. Article 121. Sobranie zakonodatel’stva Rossiiskoi Federatsii [SZ RF] [Russian Federation Collection of Legislation] 2004, No 2 (In Russ.).
III. Modernization of the civil protection system in emergencies

The main feature of the emergency response associated with the coronavirus pandemic was that the introduction of any “high alert” or “emergency” regime aimed primarily at regulating the entire life of the country: from special restrictions for the population to restrictions on the activities of all economic structures. Not all this fit into the existing framework of the RSChS.

Amendments to a number of legislative and other normative legal acts were adopted in an accelerated manner.

First, the RSChS area of responsibility was expanded. Situations related to “the spread of diseases that pose a danger to others” were added to natural and man-made emergencies.6

Secondly, in the event of a threat of occurrence and (or) the occurrence of individual emergencies, the government of the Russian Federation is granted the right to make a decision on the exercise of the powers of the RSChS coordinating body and to establish the modes of operation of the system.7

Third, the powers of the government of the Russian Federation have been expanded in terms of granting the right to introduce a high-alert regime or a state of emergency on the entire territory of the Russian Federation or on its part in the event of a threat of occurrence and (or) occurrence of a federal or interregional emergency by establishing mandatory rules of conduct for citizens and organizations.

Fourth, the powers of state authorities of the Russian Federation’s constituent entities and local self-government bodies have been

6 Postanovlenie Pravitelstva RF ot 2 aprelya 2020 g. No 417 “Ob utverzhdenii Pravil povedeniia, obiazatelnyxh dlya ispolneniia grazhdanami i organizatsiiami, pri vvedenii rezhima povyshennoi gotovnosti ili chrezvychaynoy situatsii” [Decree of the Government of the Russian Federation No 417 of 02.04.2020 “On the approval of the Rules of Conduct, binding on citizens and organizations, when a high alert or emergency regime is introduced”]. (In Russ.).

7 Federalnyy zakon ot 01.04.2020 No 98-FZ (red. ot 08.06.2020) “O vnesenii izmeneniy v otdelnye zakonodatelnye akty Rossiyskoy Federatsii po voprosam preduprezhdeniya i likvidatsii chrezvychaynykh situatsii” [Federal Law No 98-FZ of April 1, 2020 “On amendments to certain legislative acts of the Russian Federation on the prevention and elimination of emergency situations”]. (In Russ.).
expanded. They are granted the right to establish mandatory rules of conduct for citizens and organizations when introducing a high-alert or emergency situation, as well as, given the specifics of the emergency on the territory of the constituent entity of the Russian Federation, to establish additional mandatory rules for citizens and organizations. The government of the Russian Federation defined these rules in April 2020.

Fifth, the duties of citizens include requirements to comply with the established rules of conduct in a high-alert or emergency situation regime.

On April 2, 2020, by resolution No 417 the Government of the Russian Federation approved the rules of conduct for the introduction of a high-alert or emergency situation, which are mandatory for all citizens and organizations located in the relevant territories.

The rules provide, in particular, the following responsibilities for citizens:

• observe public order and the requirements of legislation on the protection of the population and territories from emergencies;
• comply with the legal requirements of emergency operational services and officials in connection with the implementation of measures to prevent and eliminate an emergency;
• when receiving instructions from authorized persons, including through the media, to evacuate from the infected area and (or) use collective and individual protective equipment;
• provide assistance to victims and carry identification documents.

It is important to note that when the “emergency” regime is introduced, citizens are guaranteed the rights (article 18 Law No 68-FZ), including:

• to protect life, health and personal property;
• use of collective and individual protection equipment and other property of Executive authorities of the Russian Federation subjects, local self-government bodies and organizations intended to protect the population from emergency situations;
• be informed about the risk of staying in certain places on the territory of the country, and about the necessary security measures;
• compensation for damage caused to their health and property as a result of an emergency;
• to medical care, compensation and social guarantees for living and working in emergency zones;
• to receive compensation and social guarantees for damage caused to their health while performing their duties in the course of emergency response;
• allowance provision in case of disability due to an injury or illness received while performing duties to protect the population and territories from an emergency;
• allowance provision for the loss of a breadwinner who died or later died from an injury or illness received while performing the duties to protect the population and territories from an emergency;
• to receive free legal assistance in accordance with the legislation of the Russian Federation.

It should be noted that the question that the powers and functions of the governing bodies of the RSChS, as well as the entire system as a whole, require modernization arose during the liquidation of emergency situations in 2010.8

The President of the Russian Federation, by his decree, declared a “state of emergency” on the territory of seven constituent entities of the Russian Federation and temporarily restricted the admission of citizens to certain territories and the implementation of economic activities thereon in order to avoid creating conditions that lead to fires in forests and peatlands, as well as to the death of people, loss of their housing and property.

It is important to note that changes in legislative and other regulatory legal acts adopted in 2020, under the conditions of the coronavirus pandemic, have left aside the EMERCOM of Russia, the Governmental Commission for Preventing and Eliminating Emergency Situations and Providing Fire Safety, as the RSChS governing body. The Government of the Russian Federation has created a single Federal

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8 Ukaz Prezidenta RF ot 2 avgusta 2010 g. No 966 “Ob obyavlenii chrezvychaynoy situatsii, svyazannoy s obespecheniem pozharnoy bezopasnosti” [Decree of the President of the Russian Federation of August 2, 2010 No 966 “On declaring an emergency situation related to fire safety”]. (In Russ.).
headquarters for the fight against coronavirus. Its powers were to monitor the current situation on coronavirus in the country and the world, prepare recommendations to state authorities, control and coordinate work on disease prevention.

In addition, a Coordination Council was established under the Government of the Russian Federation to combat the spread of a new coronavirus infection in the territory of the Russian Federation. The main tasks of the Council are defined as:

a) consideration of problems, threats and challenges related to the spread of a new coronavirus infection;

b) development of proposals for measures aimed at combating the spread of a new coronavirus infection;

c) organization of interaction between Federal government bodies, state authorities of the Russian Federation constituent entities, local self-government bodies, and other bodies and organizations on the implementation of measures aimed at combating fight against the spread of a new coronavirus infection.

Thus, in the hierarchy of governing bodies, the Government of the Russian Federation performs the main coordination and general management of emergency prevention and response. Without derogating the role of the Government, it should be understood that in the context of a systemic (global) crisis all solutions to prevent and eliminate it are not only of medical and economic nature, but also political. Long-term consequences, such as the coronavirus pandemic, have an impact on the economy and the social situation in the country and regions. Therefore, the role of political structures, including the President of the Russian Federation, the Federal Assembly, political parties, and public associations is extremely significant, but it is the subject of a separate study.

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9 Postanovlenie Pravitelstva RF ot 14 marta 2020 g. No 285 “O Koordinatsionnom sovete pri Pravitelstve Rossii po borbe s rasprostraneniem novoy koronavirusnoy infektsii na territorii Rossiiskoi Federatsii” [Decree of the Government of the Russian Federation of March 14, 2020 No 285 “On The coordination Council under the government of the Russian Federation to combat the spread of a new coronavirus infection in the territory of the Russian Federation”. (In Russ.)].
In general, speaking about the effectiveness of the public administration system during the emergency, the question of the ratio of powers of the Federal and regional levels of government should be considered separately. For the first time, in 2020, the Mayor of Moscow, referring to the norm of legislation on the protection of the population and territories,\(^{10}\) introduced a “high alert” mode, as if before the “emergency” mode. This is a very strange scheme, in which the measures taken at the constituent entity level are much stricter than during the “emergency” mode, which was never declared. Decree of the Mayor of Moscow of October 6, 2020 No 97-UM “On Amendments to the Decrees of the Mayor of Moscow of March 5, 2020 No 12-UM and of June 8, 2020 No 68-UM” did not provide much clarity.

At the same time, it should be taken into account that the choice between efficiency and legitimacy is even more acute for regional authorities than at the Federal level. There is some authority, but not enough resources.

In the light of the practice of applying the powers of the constituent entities of the Russian Federation and local self-government bodies, the rule on powers and allocated resources, such as reserving medical resources, requires changes, as well as increasing responsibility for the result. This is confirmed by a very rapid adoption of the law on expanding the powers of the Government of the Russian Federation, in terms of declaring emergencies.

IV. Economic issues of coronavirus pandemic

An example of the importance of the Government of the Russian Federation decisions on regulating legal relations in the field of protection of the population and territories in emergencies is partly the Resolution of December 28, 2019 No 1928 “On the Rules of Transfer

\(^{10}\) Federalnyy zakon No 68-FZ ot 21.12.1994 (red. ot 01.04.2020) “O zashchite naseleniya i territoriy ot chrezvychaynykh situatsiy prirodnogo i tekhnogennogo kharaktera” [Federal Law No 68-FZ of 21.12.1994 (as amended on 01.04.2020) “On protection of the population and territories from natural and man-made emergencies”]. Article 3648. Sobranie zakonodatel’stva Rossiiskoi Federatsii [SZ RF] [Russian Federation Collection of Legislation] 1994, Item 35. (In Russ.).
in Emergencies”. This is a very important decree of the Government, which could automatically provide victims with minimal payments and transfers when an emergency is introduced. Thus, the document provides that funds can be requested for the following purposes:

- one-time allowance to family members of citizens died as a result of an emergency to be paid in the amount of 1 million rubles for each victim;
- allowance to citizens whose health was grievously harmed as a result of an emergency (severe or moderate harm — 400 thousand rubles per person, mild harm — 200 thousand rubles per person);
- providing financial assistance to citizens in the amount of 10 thousand rubles per person.

For example, the families of officially dead from coronavirus infection Russian citizens could claim these payments in the event of a “state of emergency”. Those who have received severe or moderate health harm due to a viral infection are interested in such payments. With a catastrophically large number of patients, the question of who could be considered for this category and the amounts of financial resources to be provided remains.

In addition, currently there is no provision for housing and utilities compensation for citizens, loans or rent for entrepreneurs. This...
primarily applies to businesses that are expected to shift part of the losses to the state.

There is no doubt, that the situation with the coronavirus pandemic is a force majeure. In fact, the Government itself does not classify the situation to be force majeure; it is the debtor who is forced to prove that. This comes from the Civil Code, which provides that an entrepreneur is exempt from liability if he proves that there was an act of providence, i.e. extraordinary and unavoidable circumstances. To date, there is no doubt that the situation with the coronavirus is force majeure. Still, force majeure does not terminate contracts. Moreover, a drop in demand for products caused by a pandemic, or a lack of necessary goods on the market, or even the debtor’s lack of necessary funds, are not legally considered force majeure, such as an earthquake or a sudden military action. In addition, it is incorrect to assume that the emergency regime under the law on the protection of the population and territories from natural and man-made emergencies and emergency circumstances under the Civil Code are the same thing. A force majeure situation can be either noted when the emergency mode is introduced, or it can take place without it.

V. Protection of citizens’ rights and freedoms in the context of the pandemic

The important question remains whether constitutional rights can be restricted in a high-alert mode. Article 55 of the Constitution states that law only to the extent necessary to protect the health of citizens may restrict human rights. The law can restrict the right to freedom of movement where special conditions are imposed due to infection. One of these “special conditions” is a high-alert mode, which was introduced in March 2020 in almost all regions of the country.

In the conditions of the pandemic, it has become the norm for the Russian Federation to exclude citizens over the age of 65 from economic and social life. This is not the case in other countries. According to the Decree of the Mayor of Moscow of October 12, 2020 employers are required to assign almost all employees from among citizens over 65 years of age to remote work mode.
For this category of citizens, it was decided to suspend the possibility of using social cards for preferential and free travel. This decision seems strange, given that the retirement age in the country has recently been raised to 65 years. Besides, for a long time the average age of doctors of science in Russia remains 63–64 years old.\textsuperscript{12}

Here it is appropriate to quote the words of the Federal Chancellor of Germany: “We will not do what is sometimes the subject of discussion, namely, give the young all the freedoms, and push the elderly aside. This is unreasonable from an ethical point of view.”\textsuperscript{13} The Chancellor acknowledged that vulnerable groups should be protected from the coronavirus in a special way, but, according to her, they should not be “excluded from society”.

\textbf{VI. Trends in the civil protection legislation modernization}

The effectiveness of the entire RSChS system, which has been developing over the years, during the coronavirus pandemic has not been recorded. Disputes about the introduction of an emergency mode or even a state of emergency, in our opinion, are not so relevant in comparison with a fundamentally different approach to the global management quality of in such a situation.

To date, the principles of security as the basis of state policy in this area are formulated in the national security strategy and go back to the Constitution of the Russian Federation. This is also enshrined in the Fundamentals of State Policy in the field of Civil and Territories Protection from Emergencies. The system of state management of the protection of the population and territories in emergencies is part of the system of state management in the sphere of national security of

\textsuperscript{12} Alisa Veselkova. Srednestatisticheskomu rossiyskomu issledovatelyu vse eshche 47 let, i u nego net uchenoy stepeni [The average Russian researcher is still 47 years old and does not have a degree]. URL: https://nauka.tass.ru/nauka/6818815 (last visited Oct. 9, 2020). (In Russ.)

\textsuperscript{13} Sushchestvuyut shtrafy dlya lyudey 65+. Diskriminatsiya po vozrastu prodolzhaetsya? [There are penalties for people 65+. Does age discrimination continue?]. URL: https://zen.yandex.ru/media/pensy/suseestvuiut-shtrafy-dlia-liudei-65-diskriminaciia-po-vozrastu-prodolzaetsia-5ebfe89a64a20d0122a5a0c2 (last visited Oct. 9, 2020). (In Russ.)
the Russian Federation. It represents a set of measures aimed at the prevention or localization of emergencies and at the maximum reduction in threat to life and health of citizens from the destructive factors in emergencies and the damage from them.\textsuperscript{14}

Pandemic and possible global environmental, climate, technological, and biological catastrophes open a fundamentally new subject of management, i.e. relations in the conditions of global (systemic) catastrophes. For this level of events, the role of individual ministries, including the EMERCOM of Russia, and perhaps the Government of the Russian Federation, has not become the key one. In our view, this is the level of the Security Council. This constitutional body, which currently exercises mainly advisory functions, should acquire additional rights and responsibilities precisely in the event of global and national emergencies.

According to the current legislation, the Security Council is a Constitutional Advisory Body that provides draft decisions of the President of the Russian Federation on security, defense organization, military construction, defense production, and other issues related to the protection of the constitutional order, sovereignty, independence, and territorial integrity of the Russian Federation.\textsuperscript{15}

Interdepartmental commissions have been established under the Security Council: on security issues in the economic and social spheres, environmental, information security, strategic planning, etc. There is also a Scientific Council. But how effective is it? The comparison of the legal status of the Security Council of the Russian Federation with similar structures of other world powers is very revealing. Thus, the US National Security Council (NSC), which is an Advisory body of the US President by status, has about 170 people headed by the Assistant to the President for National Security Affairs. The influence of this figure on

\textsuperscript{14} Ukaz Prezidenta RF ot 11.01.2018 No 12 “Ob utverzhdenii Osnov gosudarstvennoy politiki Rossiyskoy Federatsii v oblasti zashchity naseleniya i territoriy ot chrezvychaynykh situatsiy na period do 2030 goda” [Decree of the President of the Russian Federation of 11.01.2018 No 12 “On approval of the Fundamentals of the state policy of the Russian Federation in the field of protection of the population and territories from emergency situations for the period up to 2030”]. (In Russ.).

\textsuperscript{15} Federalnyy zakon “O bezopasnosti” ot 28.12.2010 No 390-FZ [Federal Law of the Russian Federation of 28.12.2010 No 390-FZ “On Security”]. (In Russ.).
the implementation of the US national security strategy is sometimes very great. It were the people holding this post who often provided “breakthroughs” in the policy in the most important areas, first of all, foreign policy, since the functions of the National Security Council are dominated by international and military aspects of security.

According to A. A. Kokoshin: “In the American system of strategic management, it has already become a tradition to appoint prominent international scientists, economists and political scientists to such an important post as national security assistant. Among them, in addition to G. Kissinger, we can mention M. Bundy, W. Rostow, Z. Brzezinski. Assistant to President George W. Bush Rice served as Vice-Chancellor of Stanford University and then as a senior research associate in the Hoover Institute for war, peace, and revolution of this University until her appointment in January 2001.”

This approach allows the NSC to base its assessments and ideas on solid scientific forces in various fields, without creating, as a rule, analogues of the scientific Council under the Security Council of Russia. For the same reason, apparently, interdepartmental commissions are not formed under the NSC. However, special top-level working groups are often set up to provide strategic management in crises.

VII. Conclusion

In October 2020, at the height of the second wave of the coronavirus pandemic, the President of the Russian Federation signed a decree on the establishment of an Interagency Commission of Russia’s Security Council on issues of developing a national system of protection against new infections.

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16 Andrey A. Kokoshin. Strategicheskoe upravlenie: Teoriya, istoricheskiy opyt, sravnitelnyy analiz, zadachi dlya Rossii [Strategic management: Theory, historical experience, comparative analysis, tasks for Russia]. Moscow: MGIMO (U) MFA of the Russian Federation; ROSSPEN, 2003. (In Russ.).

17 Ukaz Prezidenta RF ot 12.10.2020 No 620 “O Mezhvedomstvennoy komissii Soveta Bezopasnosti Rossii po voprosam sozdaniya natsionalnoy sistemy zashchity ot novykh infektsiy” [Decree of the President of the Russian Federation of 12.10.2020 No 620 “On the Interdepartmental Commission of the Security Council of the Russian Federation on the Creation of a National System of Protection against New Infections”] (In Russ.).
The main task of this Interagency Commission is to fulfill the tasks assigned to the Security Council of the Russian Federation to respond to threats related to the spread of infectious diseases and antimicrobial resistance.

The functions of this Commission differ significantly from those of the interagency commissions already established under the Security Council.

First, it is an assessment of internal and external threats associated with the spread of infectious diseases and antimicrobial resistance; monitoring the spread of infectious diseases and antimicrobial resistance; assessing the level of protection of the Russian population from new infections, methods of treatment of infectious diseases, as well as developing recommendations for improving these measures and methods; organizing comprehensive scientific research in order to develop technological and other solutions for the prevention, diagnosis, treatment of infectious diseases, etc.

Secondly, it is the preparation of proposals and recommendations to the Security Council on issues related to the solution of strategic tasks to counter the spread of infectious diseases and antimicrobial resistance, as well as the development of preventive measures; to assess the effectiveness of spending budget allocations for purposes related to the Commission’s activities; to coordinate the activities of Federal government bodies, other state bodies, local self-government bodies and organizations in solving operational, medium-and long-term tasks to counter the spread of infectious diseases and antimicrobial resistance.

Third, the Commission’s functions include analyzing the effectiveness of bodies and organizations in implementing Security Council decisions in this area; participating in the development and implementation of strategic planning documents; and reviewing draft state programs and regulatory legal acts in the field of countering the spread of infectious diseases and antimicrobial resistance.

Fourth, it is an examination of draft decisions of Federal Executive authorities and Executive authorities of the Russian Federation subjects in the field of countering the spread of infectious diseases and antimicrobial resistance.

In our view, the creation of an Interagency Commission of Russia’s Security Council on issues of developing a national system of protection
against new infections is the beginning of a system of measures aimed at using the potential of the Security Council not as an advisory body, but as the most logical, targeted and functional decision-making center, just in situations of the scale of the coronavirus pandemic.

The Security Council is a supranational, political body with the capacity and authority to make extreme decisions in extreme situations. The government of the Russian Federation and the entire vertical of management are performers; the President of the Russian Federation needs a special, status, competent body for making collective decisions. This, of course, must be a transformed Security Council.

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