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UNITED NATIONS JURIDICAL YEARBOOK

1986

Part Two. Legal activities of the United Nations and related intergovernmental organizations

Chapter III. General review of the legal activities of the United Nations and related intergovernmental organizations

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Chapter III

GENERAL REVIEW OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. General review of the legal activities of the United Nations

1. DISARMAMENT AND RELATED MATTERS

(*a*) Comprehensive approaches to disarmament

(i) *Follow-up of the special sessions of the General Assembly devoted to disarmament*

States Members of the United Nations continued to recognize in 1986 that the Final Document of the Tenth Special Session of the General Assembly,[1] the first special session of the General Assembly devoted to disarmament, remained a document of irreducible significance. At the same time, Member States expressed disappointment that the specific goals set in the Final Document and adopted by consensus were far from being achieved, despite their reaffirmation at the second special session devoted to disarmament in 1982.

In 1986 the General Assembly adopted 28 resolutions and one decision on the two agenda items concerning the follow-up of the special sessions. Some of the resolutions concerning follow-up questions in a general sense are presented below.

By its resolution 41/60 C of 3 December 1986,[2] the Assembly took note of the "Draft guidelines for appropriate types of confidence-building measures and for the implementation of such measures on a global or regional level" reproduced in the report of the Disarmament Commission.[3] By its resolution 41/60 G of the same date,[4] the Assembly decided to convene its third special session on disarmament in 1988 and to establish an open-ended Preparatory Committee for the Third Special Session of the General Assembly devoted to disarmament; and requested the Preparatory Committee to prepare a draft agenda for the special session to examine all relevant questions relating to that session and to submit to the General Assembly at its forty-second session its recommendations thereon. By its resolution 41/60 H of the same date,[5] the General Assembly reaffirmed its decisions contained in annex IV to the Concluding Document of the Twelfth Special Session of the General Assembly[6] and the report of the Secretary-General[7] approved by resolution 33/71 E of 14 December 1978. Moreover, by its resolution 41/86 K of 4 December 1986,[8] the General Assembly invited all States to increase cooperation and to strive actively for meaningful disarmament negotiations on the basis of reciprocity, equality, undiminished security and the non-use of force in international relations, so that they might prevent qualitative enhancement and quantitative accumulation of weapons, as well as the development of new types and systems of weaponry, especially weapons of mass

destruction; stressed the importance of strengthening the effectiveness of the United Nations in fulfilling its central role and primary responsibility in the sphere of disarmament; and emphasized the necessity of refraining from the dissemination of any doctrines and concepts endangering international peace and justifying the leashing of nuclear war, which led to the deterioration of the international situation and to the further intensification of the arms race and which were detrimental to the generally recognized necessity of international cooperation for disarmament. And by its resolution 41/86 O of the same date,[9] the Assembly invited all States, particularly nuclear-weapon States, and especially those among them which possessed the most important nuclear arsenals, to take urgent measures with a view to implementing the recommendations and decisions contained in the Final Document of the Tenth Special Session of the General Assembly; called upon the two leading nuclear-weapon States to pursue their negotiations with renewed determination and taking into account the interest of the entire international community in order to halt the arms race, particularly the nuclear-arms race, reduce substantially their nuclear arsenals, prevent the arms race in outer space and undertake effective measures of nuclear disarmament; called upon the Conference on Disarmament to proceed urgently to negotiations on the cessation of the nuclear-arms race and nuclear disarmament and on the prevention of nuclear war, to intensify negotiations on the prevention of an arms race in outer space and to elaborate drafts of treaties on a nuclear-test ban and on a complete and effective prohibition of the development, production and stockpiling of all chemical weapons and on their destruction; and invited all States engaged in disarmament and arms limitation negotiations outside the framework of the United Nations to keep the General Assembly and the Conference on Disarmament informed on the status and/or results of such negotiations, in conformity with the relevant provisions of the Final Document of the Tenth Special Session. And in addition, in its resolution 41/86 Q, also of the same date,[10] the General Assembly called upon Member States to intensify their efforts towards achieving agreements on balanced, mutually acceptable, comprehensively verifiable and effective arms limitation and disarmament measures; took note with appreciation of the report of the Secretary-General containing the views and suggestions of Member States on verification principles, procedures and techniques;[11] and requested the Disarmament Commission to consider at its 1987 session, in the context of pursuing general and complete disarmament under effective international control, verification in all its aspects, including principles, provisions and techniques to promote the inclusion of adequate verification in arms limitation and disarmament agreements and the role of the United Nations and its Member States in the field of verification, and to report on its deliberations, conclusions and recommendations to the General Assembly at its forty-second session.

(ii) *General and complete disarmament*

States representing all political and geographical groups stated in 1986 that general and complete disarmament under effective international control remained their ultimate goal. In discussion of the concept, the need for a comprehensive programme, one which would make it possible to begin a process of global disarmament negotiations, was reaffirmed.

By its resolution 41/59 B of 3 December 1986,[12] the General Assembly reaffirmed its conviction that a better flow of objective information on military

capabilities could help relieve international tension and contribute to the building of confidence among States on a global, regional or subregional level and to the conclusion of concrete disarmament agreements; urged those global, regional and subregional organizations that had already expressed support for the principle of practical and concrete confidence-building measures of a military nature on a global, regional or subregional level to intensify their efforts with a view to adopting such measures at the earliest possible date; urged all States, in particular nuclear-weapon States and other militarily significant States, to consider implementing additional measures based on the principles of openness and transparency, with the aim of facilitating the availability of objective information on, as well as objective assessment of, military capabilities; and expressed its thanks to the Secretary-General for his report[13] prepared in conformity with resolution 40/94 K of 12 December 1985. Furthermore, by its resolution 41/59 J of the same date,[14] the General Assembly urged all States parties to arms limitation and disarmament agreements to implement and comply with the entirety of the provisions of such agreements; and called upon all Member States to support efforts aimed at the resolution of non-compliance questions, with a view to encouraging strict observance by all parties of the provisions of arms limitation and disarmament agreements and maintaining or restoring the integrity of such agreements.

(iii) *World disarmament conference*

In 1986, as in previous years, there was no agreement among the nuclear-weapon States on convening a world disarmament conference. By its resolution 41/61 of 3 December 1986,[15] the General Assembly renewed the mandate of the Ad Hoc Committee on the World Disarmament Conference, deferring the question of convening meetings of the Committee to the forty-second session of the Assembly, and recommended that the Chairman of the Ad Hoc Committee undertake consultations with the nuclear-weapon States, as well as with all other States, in order to remain informed of the development of their positions on the question of convening a world disarmament conference.

(*b*) Nuclear disarmament

(i) *Nuclear arms limitation and disarmament*

Within the multilateral framework—the Disarmament Commission, the Conference on Disarmament and the General Assembly at its forty-first session—no major substantive progress was achieved on nuclear arms limitation and disarmament.

By its resolution 41/86 F of 4 December 1986,[16] The General Assembly affirmed that the existence of bilateral negotiations on nuclear and space arms in no way diminished the urgent need to initiate multilateral negotiations in the Conference on Disarmament on the cessation of the nuclear-arms race and nuclear disarmament; and again requested the Conference on Disarmament to establish an ad hoc committee at the beginning of its 1987 session to elaborate on paragraph 50 of the Final Document of the Tenth Special Session of the General Assembly and to submit recommendations to the Conference as to how it could best initiate multilateral negotiations of agreements, with adequate measures of verification, in appropriate stages for (*a*) cessation of the qualitative improve-

ment and development of nuclear-weapon systems; (*b*) cessation of the production of all types of nuclear weapons and their means of delivery and of the production of fissionable material for weapons purposes; and (*c*) substantial reduction in existing nuclear weapons with a view to their ultimate elimination. Furthermore, by its resolution 41/86 N of the same date,[17] the General Assembly appealed to the Governments of the Union of Soviet Socialist Republics and the United States of America to conduct, pursuant to their special obligations and responsibilities as leading nuclear-weapon States, their bilateral negotiations with the greatest resolve with a view to achieving agreements on concrete and effective measures for the halting of the nuclear-arms race, radical reduction of their nuclear arsenals, nuclear disarmament and the prevention of an arms race in outer space; and invited the two negotiating parties to keep the General Assembly duly informed of the progress of their negotiations. And by its resolution 41/60 E of 3 December 1986,[18] the Assembly once again called upon all nuclear-weapon States to agree to a freeze on nuclear weapons, which would, *inter alia,* provide for a simultaneous total stoppage of any further production of nuclear weapons and a complete cut-off in the production of fissionable material for weapons purposes. In addition, by its resolution 41/60 I of the same date,[19] the General Assembly urged once more the Union of Soviet Socialist Republics and the United States of America, as the two major nuclear-weapon States, to proclaim, either through simultaneous unilateral declarations or through a joint declaration, an immediate nuclear-arms freeze, which would be a first step towards the comprehensive programme of disarmament; and requested the above-mentioned two major nuclear-weapon States to submit a joint report or two separate reports to the General Assembly, prior to the opening of its forty-second session, on the implementation of the resolution.

(ii) *Prevention of nuclear war*

In 1986, the General Assembly continued to pursue the goal of the prevention of nuclear war, which it viewed as an absolute condition for the survival of humanity.

By its resolution 41/86 B of 4 December 1986,[20] the General Assembly considered that the solemn declarations by two nuclear-weapon States made or reiterated at the twelfth special session of the General Assembly, concerning their respective obligations not to be the first to use nuclear weapons, offered an important avenue to decrease the danger of nuclear war; expressed the hope that those nuclear-weapon States that had not yet done so would consider making similar declarations with respect to not being the first to use nuclear weapons; and requested the Conference on Disarmament to consider under its relevant agenda item, *inter alia,* the elaboration of an international instrument of a legally binding character laying down the obligation not to be the first to use nuclear weapons. Furthermore, by its resolution 41/60 F of 3 December 1986,[21] the Assembly reiterated its request to the Conference on Disarmament to commence negotiations, as a matter of priority, in order to reach agreement on an international convention prohibiting the use or threat of use of nuclear weapons under any circumstances, taking as a basis the draft Convention on the Prohibition of the Use of Nuclear Weapons annexed to the resolution.

(iii) *Cessation of nuclear-weapon tests*

In 1986, the question of the cessation of nuclear-weapon tests was intensively discussed in the various disarmament forums after positive developments

on the multilateral level were observed. Among other things, it was pointed out anew that the verification question should not prevent further work on a test ban from proceeding in view of the progress made towards international scientific cooperation under the auspices of the Conference on Disarmament.

By its resolution 41/46 A of 3 December 1986,[22] the General Assembly, noting that the Third Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, in its Final Declaration adopted on 21 September 1985,[23] had called on the nuclear-weapon States parties to the Treaty to resume trilateral negotiations in 1985 and on all the nuclear-weapon States to participate in the urgent negotiation and conclusion of a comprehensive nuclear-test-ban treaty, as a matter of the highest priority, in the Conference on Disarmament, reaffirmed its conviction that a treaty to archive the prohibition of all nuclear-test explosions by all States for all time was a matter of the highest priority; urged once more the three depository Powers of the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water[24] and of the Treaty on the Non-Proliferation of Nuclear Weapons[25] to abide strictly by their undertakings to seek to achieve the early discontinuance of all test explosions of nuclear weapons for all time and to expedite negotiations to that end; and appealed to all States members of the Conference on Disarmament, in particular to the three depository Powers of the Test-Ban Treaty and of the Non-Proliferation Treaty, to promote the establishment by the Conference at the beginning of its 1987 session of an ad hoc committee with the objective of carrying out the multilateral negotiation of a treaty on the complete cessation of nuclear-test explosions; and called upon the States depositaries of the above-mentioned Treaties, by virtue of their special responsibilities under those Treaties and as a provisional measure, to bring to a halt without delay all nuclear-test explosions, either through a trilaterally agreed moratorium or through unilateral moratoria, which should include appropriate means of verification. Furthermore, by its resolution 41/46 B of the same date,[26] the Assembly recommended that the States parties to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water undertake practical steps leading to the convening of a conference to consider amendments to the Treaty that would convert it into a comprehensive nuclear-test-ban treaty. Moreover, by its resolution 41/47, adopted also on the same date,[27] the Assembly urged that specified actions be taken in order that a comprehensive nuclear-test-ban treaty might be concluded at an early date, and that those nuclear-weapon States that had not yet done so should adhere to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water; and also urged the Conference on Disarmament: (*a*) to take immediate steps for the establishment, with the widest possible participation, of an international seismic monitoring network with a view to the further development of its potential to monitor and verify compliance with a comprehensive nuclear-test-ban treaty; (*b*) in that context, to take into account the progress achieved by the Ad Hoc Group of Scientific Experts to Consider International Cooperative Measures to Detect and Identify Seismic Events; and (*c*) to initiate detailed investigation of other measures to monitor and verify compliance with such a treaty. In addition, by its resolution 41/59 N, also of the same date,[28] the General Assembly called upon all States conducting nuclear explosions to provide to the Secretary-General specified information on nuclear explosions within one week of each such explosion.

(iv) *Strengthening of the security of non-nuclear-weapon States*

In 1986, consideration of effective security guarantees to non-nuclear-weapon States did not bring the declared goal any closer. In the General Assembly, divergent views on the nature of the guarantees themselves and on the declarations by the nuclear-weapon States persisted.

By its resolution 41/51, adopted on 3 December 1986,[29] the General Assembly reaffirmed once again the urgent need to reach agreement on effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons and to find a common approach acceptable to all, which could be included in an international instrument of a legally binding character; and considered that the Conference on Disarmament should continue to explore ways and means of overcoming the difficulties encountered in carrying out negotiations on that question. Furthermore, by its resolution 41/52 of the same date,[30] the Assembly noted with satisfaction that in the Conference on Disarmament there was no objection, in principle, to the idea of an international convention to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons; and appealed to all States, especially the nuclear-weapon States, to demonstrate the political will necessary to reach agreement on a common approach, and in particular, on a common formula which could be included in an international instrument of a legally binding character.

(v) *Nuclear-weapon-free zones*

The question of the establishment of nuclear-weapon-free zones in general and in various regions of the world continued to be discussed at length during the 1986 session of the Conference on Disarmament and at the forty-first session of the General Assembly. The concept was stressed in the context of regional disarmament measures and the nuclear non-proliferation regime.

Treaty for the Prohibition of Nuclear Weapons in Latin America

By its resolution 41/45 of 3 December 1986,[31] the General Assembly deplored that the signature of Additional Protocol I of the Treaty for the Prohibition of Nuclear Weapons in Latin America[32] by France, which had taken place on 2 March 1979, had not yet been followed by the corresponding ratification; and once more urged that State not to delay any further such ratification, which appeared all the more advisable, since France was the only one of the four States to which the Protocol was open that was not yet party to it.

Denuclearization of Africa

By its resolution 41/55 A of 3 December 1986,[33] the General Assembly strongly renewed its call upon all States to consider and respect the continent of Africa and its surrounding areas as a nuclear-weapon-free zone; reaffirmed that the implementation of the Declaration on the Denuclearization of Africa adopted by the Assembly of the Heads of State and Government of the Organization of African Unity would be an important measure to prevent the proliferation of nuclear weapons and to promote international peace and security; and demanded once again that the racist regime of South Africa refrain from manufacturing, testing, deploying, transporting, storing, using or threatening to use nuclear weapons. Moreover, by its resolution 41/55 B of the same date,[34] the Assembly reaffirmed that the acquisition of nuclear-weapon capability by the racist regime

constituted a very grave danger to international peace and security and, in particular, jeopardized the security of African States and increased the danger of the proliferation of nuclear weapons; and called upon all States, corporations, institutions and individuals to terminate forthwith all forms of military and nuclear cooperation with the racist regime.

Establishment of a nuclear-weapon-free zone in the region of the Middle East

By its resolution 41/48 of 3 December 1986,[35] the General Assembly urged all parties directly concerned to consider seriously taking the practical and urgent steps required for the implementation of the proposal to establish a nuclear-weapon-free zone in the region of the Middle East in accordance with the relevant resolutions of the General Assembly and, as a means of promoting that objective, invited the countries concerned to adhere to the Treaty on the Non-Proliferation of Nuclear Weapons; called upon all countries of the region that had not done so, pending the establishment of the zone, to agree to place all their nuclear activities under International Atomic Energy Agency safeguards; invited those countries, pending the establishment of a nuclear-weapon-free zone in the region of the Middle East, to declare their support for establishing such a zone, consistent with the relevant paragraph of the Final Document of the Tenth Special Session of the General Assembly, and to deposit those declarations with the Security Council; and further invited those countries, pending the establishment of the zone, not to develop, produce, test or otherwise acquire nuclear weapons or permit the stationing on their territories, or territories under their control, of nuclear weapons or nuclear explosive devices. Furthermore, by its resolution 41/93 of 4 December 1986,[36] the Assembly reiterated its condemnation of Israel's refusal to renounce any possession of nuclear weapons; requested once more the Security Council to take urgent and effective measures to ensure that Israel complied with Security Council resolution 487 (1981) and placed all its nuclear facilities under International Atomic Energy Agency safeguards; and reiterated its request to the Security Council to investigate Israel's nuclear activities and the collaboration of other States, parties and institutions in the nuclear field.

Establishment of a nuclear-weapon-free zone in South Asia

By its resolution 41/49 of 3 December 1986,[37] the General Assembly reaffirmed its endorsement, in principle, of the concept of a nuclear-weapon-free zone in South Asia; and urged once again the States of South Asia to continue to make all possible efforts to establish a nuclear-weapon-free zone in South Asia and to refrain, in the meantime, from any action contrary to that objective.

(vi) *International cooperation in the peaceful uses of nuclear energy*

A nuclear reactor accident in Chernobyl, in the Soviet Union, in April 1986 led to new activities in nuclear safety, notably to the swift elaboration and adoption at a special session of IAEA's General Conference of two international conventions related to nuclear safety and radiological protection.

By its resolution 41/36 of 11 November 1986,[38] the General Assembly urged all States to strive for effective and harmonious international cooperation in carrying out the work of the International Atomic Energy Agency, pursuant to its statute; in promoting the use of nuclear energy and the application of the

necessary measures to strengthen further the safety of nuclear installations and to minimize risks to health; in strengthening technical assistance and cooperation for developing countries; and in ensuring the effectiveness and efficiency of the Agency's safeguards system; and welcomed the signing by a significant number of States of the Convention on Early Notification of a Nuclear Accident[39] and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency[40] and called upon those States that had not yet done so to become parties to them as soon as possible.

(*c*) Prohibition or restriction of use of other weapons

(i) *Chemical weapons*

In 1986, significant progress was made in the negotiations in the Conference on Disarmament concerning the comprehensive prohibition of chemical weapons.

The General Assembly adopted three resolution reflecting the divergent positions of groups of States; all of them, however, urged the Conference on Disarmament to intensify its negotiations on a chemical weapons convention. Moreover, by its resolution 41/58 B of 3 December 1986,[41] the General Assembly reaffirmed the necessity for the speediest elaboration and conclusion of a convention on the prohibition of the development, production and stockpiling of all chemical weapons and on their destruction; and also reaffirmed its call to all States to conduct serious negotiations in good faith and to refrain from any action that could impede negotiations on the prohibition of chemical weapons and specifically from the production of new types of such weapons, as well as from deploying chemical weapons on the territory of other States. And by its resolution 41/58 C of the same date,[42] the Assembly called for compliance with existing international obligations regarding prohibitions on chemical and biological weapons, and condemned all actions that contravened those obligations.

(ii) *Second Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction*

The Second Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, held in 1986, was considered a success because, among other things, it unanimously adopted a Final Declaration[43] in which the significance of the Convention was reaffirmed. By its resolution 41/58 A of 3 December 1986,[44] the General Assembly expressed its appreciation for the consensus adoption by the Conference of the Final Declaration and called upon the States that were not yet parties to the Convention to ratify it or accede to it without delay, thus contributing to the achievement of universal adherence to the Convention and to international confidence.

(iii) *Prevention of an arms race in outer space*

In 1986, the question of the prevention of an arms race in outer space continued to be a major concern both within and outside the United Nations.

Among its many aspects, the obligation of all States to refrain from the threat or use of force in their space activities was particularly stressed in the year's debates in the disarmament forums. By its resolution 41/53 of 3 December 1986,[45] the General Assembly reiterated that the Conference on Disarmament, as the single multilateral disarmament negotiating forum, had the primary role in the negotiation of a multilateral agreement or agreements, as appropriate, on the prevention of an arms race in outer space in all its aspects; requested the Conference on Disarmament to reestablish an ad hoc committee with an adequate mandate at the beginning of its 1987 session, with a view to undertaking negotiations for the conclusion of an agreement or agreements, as appropriate, to prevent an arms race in outer space in all its aspects; urged the Union of Soviet Socialist Republics and the United States of America to pursue intensively their bilateral negotiations in a constructive spirit aimed at reaching early agreement for preventing an arms race in outer space, and to advise the Conference on Disarmament periodically of the progress of their bilateral sessions so as to facilitate its work; and called upon all States, especially those with major space capabilities, to refrain, in their activities relating to outer space, from actions contrary to the observance of the relevant existing treaties or to the objective of preventing an arms race in outer space.

(iv) *New weapons of mass destruction; radiological weapons*

The situation in 1986 with regard to a general prohibition of the development and manufacture of new weapons of mass destruction remained much as it had in other recent years. No consensus was reached on convening a group of qualified experts to identify new types of weapons of mass destruction and, if necessary, to recommend specific negotiations on them, as envisaged in resolution 49/90 of 12 December 1985. As for the specific question of radiological weapons, their banning had been discussed concurrently with the proposal to prohibit attacks against nuclear facilities. By its resolution 41/56 of 3 December 1986,[46] the General Assembly reaffirmed the necessity of prohibiting the development and manufacture of new types of weapons of mass destruction and new systems of such weapons; requested the Conference on Disarmament, in the light of its existing priorities, to keep constantly under review, with the assistance of a periodically convened group of experts, the question of the prohibition of the development and manufacture of new types of weapons of mass destruction and new systems of such weapons with a view to making, when necessary, recommendations on undertaking specific negotiations on the identified types of such weapons; called upon all States, immediately following the identification of any new type of weapon of mass destruction, to commence negotiations on its prohibition with the simultaneous introduction of a moratorium on its practical development; and once again urged all States to refrain from any action that could adversely affect the efforts aimed at preventing the emergence of new types of weapons of mass destruction and new systems of such weapons. Furthermore, by its resolution 41/59 A of the same date,[47] the Assembly requested the Conference on Disarmament to continue its negotiations on the question of radiological weapons with a view to a prompt conclusion of its work, taking into account all proposals presented to the Conference to that end, the results of which should be submitted to the General Assembly at its forty-second session. And by its resolution 41/59 I of the same date,[48] the General Assembly reaffirmed that military attacks of any kind against nuclear facilities were tantamount

to the use of radiological weapons, due to the dangerous radioactive forces that such attacks caused to be released; and requested the Conference on Disarmament to reach, as early as possible, an agreement prohibiting military attacks against nuclear facilities.

(*d*) Consideration of conventional disarmament and other approaches

(i) *Conventional weapons*

In 1986, an increasing number of States expressed concern over the problem of conventional weapons and pointed to the necessity of conventional disarmament, although most of them continued to accord priority to nuclear disarmament. Reflecting the growing interest of States in the subject, a separate agenda item on the subject was considered by the General Assembly for the first time since the creation of the United Nations.

By its resolution 41/59 G of 3 December 1986,[49] the General Assembly reaffirmed the importance of the efforts aimed at resolutely pursuing the limitation and gradual reduction of armed forces and conventional weapons within the framework of progress towards general and complete disarmament; believed that the military forces of all countries should not be used other than for the purpose of self-defence; and urged the countries with the largest military arsenals, which had a special responsibility in pursuing the process of conventional armaments reductions, and the member States of the two major military alliances to continue negotiations on conventional disarmament in earnest, with a view to reaching early agreement on the limitation and gradual and balanced reduction of armed forces and conventional weapons under effective international control in their respective regions. Furthermore, by its resolution 41/59 M of the same date,[50] the Assembly expressed its firm support for all regional endeavours, as well as unilateral measures, directed to strengthening a climate of mutual confidence that would make possible regional agreements on arms limitation in the future. And by its resolution 41/59 E of the same date,[51] the Assembly welcomed the concrete, militarily significant, politically binding and verifiable measures adopted on 19 September 1986, within the framework of the process of the Conference on Security and Cooperation in Europe, at the Stockholm Conference on Confidence- and Security-building Measures and Disarmament in Europe, covering the whole of Europe and designed to reduce the dangers of armed conflict and of misunderstanding or miscalculation of military activities; and invited all States, with full account to be taken of specific regional conditions, to consider the achievement of lessening confrontation by confidence- and security-building measures, which contributed to reducing the danger of surprise attacks, diminishing the possibility of misunderstanding or political pressure through the use of military strength and reducing misinterpretations that could worsen crises and eventually lead to conflict. Moreover, by its resolution 41/50, also of the same date,[52] the Assembly noted with satisfaction that an increasing number of States had either signed, ratified, accepted or acceded to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, which had been opened for signature in New York on 10 April 1981;[53] further noted with satisfaction that, consequent upon the fulfilment of the conditions set

out in article 5 of the Convention, the Convention and the three Protocols annexed thereto had entered into force on 2 December 1983; urged all States that had not yet done so to exert their best endeavours to become parties to the Convention and the Protocols annexed thereto as early as possible, so as ultimately to obtain universality of adherence; and noted that, under article 8 of the Convention, conferences might be convened to consider amendments to the Convention or any of the annexed Protocols, to consider additional protocols relating to other categories of conventional weapons not covered by the existing annexed Protocols, or to review the scope and operation of the Convention and the Protocols annexed thereto and to consider any proposal for amendments to the Convention or to the existing Protocols and any proposals for additional protocols relating to other categories of conventional weapons not covered by the existing Protocols.

(ii) *Reduction of military budgets*

After six years of consideration, the Disarmament Commission reached agreement during its 1986 session on a set of principles to govern actions of States in freezing and reducing military budgets, except for one principle, concerning transparency, for which various alternatives were proposed by the member States.

By its resolution 41/57 of 3 December 1986,[54] the General Assembly declared again its conviction that it was possible to achieve international agreements on the reduction of military budgets without prejudice to the right of all States to undiminished security, self-defence and sovereignty; requested the Disarmament Commission to continue the consideration of the item entitled "Reduction of military budgets" and, in that context, to conclude, at its substantive session in 1987, its work on the last outstanding paragraph of the principles which should govern further actions of States in the field of freezing and reduction of military budgets, and to submit its report and recommendations to the General Assembly at its forty-second session; and drew anew the attention of Member States to the fact that the identification and elaboration of the principles which should govern further actions of States in freezing and reducing military budgets could contribute to harmonizing the views of States and creating confidence among them conducive to achieving international agreements on the reduction of military budgets.

(iii) *Declaration of the Indian Ocean as a Zone of Peace*

In 1986, the Ad Hoc Committee on the Indian Ocean continued its preparatory work for the Conference on the Indian Ocean. The work of the Committee revealed again that the positions of States on the question of the convening of the Conference had remained diverse.

By its resolution 41/87 of 4 December 1986,[55] the General Assembly emphasized its decision to convene the Conference on the Indian Ocean at Colombo as a necessary step for the implementation of the Declaration of the Indian Ocean as a Zone of Peace adopted in 1971;[56] requested the Ad Hoc Committee to complete preparatory work relating to the Conference on the Indian Ocean during 1987 in order to enable the opening of the Conference at Colombo at an early date soon thereafter, but not later than 1988; and decided that preparatory work would comprise organizational matters and substantive

issues, including the provisional agenda for the Conference, rules of procedure, participation, stages of the Conference, level of representation, documentation, consideration of appropriate arrangements for any international agreements that might ultimately be reached for the maintenance of the Indian Ocean as a zone of peace and the preparation of the draft final document of the Conference.

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2. OTHER POLITICAL AND SECURITY QUESTIONS

(*a*) Implementation of the Declaration on the Strengthening of International Security[57]

In its resolution 41/90 of 4 December 1986,[58] adopted on the recommendation of the First Committee,[59] the General Assembly reaffirmed the validity of the Declaration on the Strengthening of International Security and called upon all States to contribute effectively to its implementation; stressed that there was an urgent need to enhance the effectiveness of the Security Council in discharging its principal role of maintaining international peace and security and to enhance the authority and enforcement capacity of the Council in accordance with the Charter; emphasized that the Security Council should consider holding periodic meetings in specific cases to consider and review outstanding problems and crises, thus enabling the Council to play a more active role in preventing conflicts; and considered that respect for and promotion of human rights and fundamental freedoms in their civil, political, economic, social and cultural aspects, on the one hand, and the strengthening of international peace and security, on the other, mutually reinforced each other.

(*b*) Legal aspects of the peaceful uses of outer space

The Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space held its twenty-fifth session at the United Nations Office at Geneva from 24 March to 11 April 1986.[60]

In continuing its consideration of the agenda item entitled "Legal implications of remote sensing of the Earth from space, with the aim of finalizing the draft set of principles", the Subcommittee re-established its Working Group on the item. Following discussions and a number of informal consultations, the Working Group recorded consensus on the text of a draft set of principles relating to remote sensing of the Earth from space.

The Subcommittee also re-established its Working Group on the agenda item entitled "The elaboration of draft principles relevant to the use of nuclear power sources in outer space". One working paper was submitted to the Legal Subcommittee at its current session by the delegation of Canada.[61] The Working Group, following discussions and a number of informal consultations, recorded consensus on the texts of two draft principles, relating to the theme of notification and the theme of assistance to States.

The Subcommittee re-established as well its Working Group on the item entitled "Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary

orbit without prejudice to the role of the International Telecommunication Union". Two working papers were submitted to the Subcommittee during its current session: one by the delegation of the German Democratic Republic,[62] and the other by the delegation of Kenya.[63] The Group considered two aspects of the agenda item, namely, the definition and delimitation of outer space, on the one hand, and the geostationary orbit, on the other, in the light of the working papers and other documents before the Working Group. The Subcommittee, in connection with the question of the geostationary orbit, took note of a letter dated 16 October 1985 from the Secretary-General of the International Telecommunication Union to the Secretary-General of the United Nations[64] concerning a decision reached at the first session of the World Administrative Radio Conference in 1985 on the use of the geostationary-satellite orbit and the planning of the space services utilizing it, in which the Conference had declared itself not competent to deal with the subject of some specific principles concerning the demands made by the equatorial countries to have sovereignty/jurisdiction over the corresponding segments of the geostationary orbit superjacent to their territories as well as the preservation of such segments by those countries for the opportune and appropriate utilization of the orbit by all States, particularly the developing countries.

The Committee on the Peaceful Uses of Outer Space, at its twenty-ninth session,[65] held at United Nations Headquarters from 2 to 13 June 1986, took note with appreciation of the report of the Legal Subcommittee on the work of its twenty-fifth session and made recommendations concerning the agenda of the Subcommittee at its twenty-sixth session.

With regard to the item "Legal implications of remote sensing of the Earth from space, with the aim of finalizing the draft set of principles", the Committee endorsed the draft principles on the subject agreed by the Legal Subcommittee.

Regarding the item "The elaboration of draft principles relevant to the use of nuclear power sources in outer space", the Committee endorsed the text of the two draft principles adopted by the Subcommittee.

At its forty-first session, by its resolution 41/64 of 3 December 1986,[66] adopted on the recommendation of the Special Political Committee,[67] the General Assembly endorsed the report of the Committee on the Peaceful Uses of Outer Space; invited States that had not yet become parties to the international treaties governing uses of outer space[68] to give consideration to ratifying or acceding to those treaties; endorsed the recommendations of the Committee that the Legal Subcommittee at its twenty-sixth session should, through its working group: (*a*) continue the elaboration of draft principles relevant to the use of nuclear power sources in outer space; (*b*) continue its consideration of matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit, without prejudice to the role of the International Telecommunication Union; and (*c*) considered the choice of a new item for the agenda of the Legal Subcommittee, with a view to making a recommendation to the Committee in order to reach consensus during its thirtieth session. Furthermore, by its resolution 41/65, also of the same date,[69] adopted also on the recommendation of the Special Political Committee,[70] the Assembly adopted the Principles Relating to Remote Sensing of the Earth from Outer Space set forth in the annex to the resolution.

ANNEX

Principles Relating to Remote Sensing of the Earth from Outer Space

Principle I

For the purposes of these principles with respect to remote sensing activities:

(*a*) The term "remote sensing" means the sensing of the Earth's surface from space by making use of the properties of electromagnetic waves emitted, reflected or diffracted by the sensed objects, for the purpose of improving natural resources management, land use and the protection of the environment;

(*b*) The term "primary data" means those raw data that are acquired by remote sensors borne by a space object and that are transmitted or delivered to the ground from space by telemetry in the form of electromagnetic signals, by photographic film, magnetic tape or any other means;

(*c*) The term "processed data" means the products resulting from the processing of the primary data, needed in order to make such data usable;

(*d*) The term "analysed information" means the information resulting from the interpretation of processed data, inputs of data and knowledge from other sources;

(*e*) The term "remote sensing activities" means the operation of remote sensing space systems, primary data collection and storage stations, and activities in processing, interpreting and disseminating the processed data.

Principle II

Remote sensing activities shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic, social or scientific and technological development, and taking into particular consideration the needs of the developing countries.

Principle III

Remote sensing activities shall be conducted in accordance with international law, including the Charter of the United Nations, the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, and the relevant instruments of the International Telecommunication Union.

Principle IV

Remote sensing activities shall be conducted in accordance with the principles contained in article I of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, which, in particular provides that the exploration and use of outer space shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development, and stipulates the principle of freedom of exploration and use of outer space on a basis of equality. These activities shall be conducted on the basis of respect for the principle of full and permanent sovereignty of all States and peoples over their own wealth and natural resources, with due regard to the rights and interests, in accordance with international law, of other States and entities under their jurisdiction. Such activities shall not be conducted in a manner detrimental to the legitimate rights and interests of the sensed State.

Principle V

States carrying out remote sensing activities shall promote international co-operation in these activities. To this end, they shall make available to other States opportunities for participation therein. Such participation shall be based in each case on equitable and mutually acceptable terms.

Principle VI

In order to maximize the availability of benefits from remote sensing activities, States are encouraged through agreements or other arrangements to provide for the establishment and operation of data collecting and storage stations and processing and interpretation

facilities, in particular within the framework of regional agreements or arrangements wherever feasible.

Principle VII

States participating in remote sensing activities shall make available technical assistance to other interested States on mutually agreed terms.

Principle VIII

The United Nations and the relevant agencies within the United Nations system shall promote international co-operation, including technical assistance and co-ordination in the area of remote sensing.

Principle IX

In accordance with article IV of the Convention on Registration of Objects Launched into Outer Space and article XI of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, a State carrying out a programme of remote sensing shall inform the Secretary-General of the United Nations. It shall, moreover, make available any other relevant information to the greatest extent feasible and practicable to any other State, particularly any developing country that is affected by the programme, at its request.

Principle X

Remote sensing shall promote the protection of the Earth's natural environment.

To this end, States participating in remote sensing activities that have identified information in their possession that is capable of averting any phenomenon harmful to the Earth's natural environment shall disclose such information to States concerned.

Principle XI

Remote sensing shall promote the protection of mankind from natural disasters.

To this end, States participating in remote sensing activities that have identified processed data and analysed information in their possession that may be useful to States affected by natural disasters, or likely to be affected by impending natural disasters, shall transmit such data and information to States concerned as promptly as possible.

Principle XII

As soon as the primary data and the processed data concerning the territory under its jurisdiction are produced, the sensed State shall have access to them on a non-discriminatory basis and on reasonable cost terms. The sensed State shall also have access to the available analysed information concerning the territory under its jurisdiction in the possession of any State participating in remote sensing activities on the same basis and terms, taking particularly into account the needs and interests of the developing countries.

Principle XIII

To promote and intensify international co-operation, especially with regard to the needs of developing countries, a State carrying out remote sensing of the Earth from outer space shall, upon request, enter into consultations with a State whose territory is sensed in order to make available opportunities for participation and enhance the mutual benefits to be derived therefrom.

Principle XIV

In compliance with article VI of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, States operating remote sensing satellites shall bear international responsibility for their activities and assume that such activities are conducted in accordance with these principles and the norms of international law, irrespective of whether such activities are carried out by governmental or non-governmental entities or through international organizations to which such States are parties. This principle is without prejudice to the applicability of the norms of international law on State responsibility for remote sensing activities.

By its resolution 41/66 of the same date,[71] adopted also on the recommendation of the Special Political Committee,[72] the General Assembly recognized that, in view of the considerable increase of activities in outer space, effective international rules and procedures concerning the registration of objects launched into outer space continued to be of great importance; reaffirmed, in that respect, the importance of the Convention on Registration of Objects Launched into Outer Space[73] and the registration, pursuant to the Convention, of all objects launched into outer space; urged all States that had not yet done so, particularly those conducting space activities, to give urgent consideration to ratifying or acceding to the Convention in order to assure its broad application; also urged international intergovernmental organizations that conducted space activities to declare, if they had not yet done so, their acceptance of the rights and obligations provided for in the Convention, pursuant to article VII; and requested the Secretary-General to prepare a report on the past application of the Convention and to submit it to the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space at its twenty-sixth session, for the information of the Member States.

(*c*) Question of Antarctica

By its resolution 41/88 A of 4 December 1986,[74] adopted on the recommendation of the First Committee,[75] the General Assembly requested the Antarctic Treaty Consultative Parties to keep the Secretary-General fully informed on all aspects of the question of Antarctica so that the United Nations could function as the central repository of all such information. Furthermore, by its resolution 41/88 B of the same date,[76] adopted also on the recommendation of the First Committee,[77] the General Assembly, aware that negotiations were in progress among the Antarctic Treaty Consultative Parties, with the non-Consultative Parties as observers, to which other States were not privy, with a view to establishing a regime regarding Antarctica's minerals, reaffirmed that any exploitation of the resources of Antarctica should ensure the maintenance of international peace and security in Antarctica, the protection of its environment, the non-appropriation and conservation of its resources and the international management and equitable sharing of the benefits of such exploitation; and called upon the Consultative Parties to impose a moratorium on the negotiations to establish a minerals regime until such time as all members of the international community could participate fully in such negotiations.

3. ECONOMIC, SOCIAL, HUMANITARIAN AND CULTURAL QUESTIONS

(*a*) International code of conduct on the transfer of technology

By its resolution 41/166 of 5 December 1986,[78] adopted on the recommendation of the Second Committee,[79] the General Assembly took note of the report of the Secretary-General of the United Nations Conference on Trade and Development on the consultations held in 1986 relating to the negotiations on an international code of conduct on the transfer of technology;[80] noted that the consultations had not been completed and that further work was required in the search for possible solutions to the outstanding issues in order to complete successfully the negotiations on a code of conduct; and invited the Secretary-

General of UNCTAD and the President of the United Nations Conference on an International Code of Conduct on the Transfer of Technology to continue and to finalize in 1987, on the basis of a more structured consultative mechanism, their consultations with regional groups and interested Governments with a view to identifying appropriate solutions to the issues outstanding in the code of conduct.

(*b*) Office of the United Nations High Commissioner for Refugees[81]

During the reporting period, the source of many refugee movements was increasingly that of generalized violence rather than individually experienced persecution—or fear thereof—as defined in the United Nations Convention of 1951 relating to the Status of Refugees[82] and its Protocol of 1967.[83] In that sense, many of the current refugee problems differed in nature and scope from those prevalent at the time the Office of the United Nations High Commissioner for Refugees was established. Therefore, there was an urgent need to identify new ways in which those problems could be solved in an appropriate and humane manner.

A number of developments in the field of asylum continue to give rise to concern: the adoption by a growing number of States of restrictive and deterrent measures such as the prolonged detention of asylum-seekers; the adoption of summary procedures—sometimes not accompanied by adequate legal guarantees—for dealing with "abusive" or "manifestly unfounded" claims; the refusal to examine asylum requests based either on a strict application of the notion of "country of first asylum" or on a reluctance to consider granting asylum to certain groups of refugees because of the fear of compromising bilateral relations with their countries of origin. Some States had also resorted to an unduly strict interpretation of the term "refugee" as defined in the 1951 Convention and its 1967 Protocol, coupled sometimes with the requirement that the asylum-seeker bore an unduly heavy burden of proof. A problem which received considerable attention from the international community was that of refugees and asylum-seekers who moved from a country where they had allegedly found protection, to seek asylum or a durable solution in another without having sought the consent of the national authorities of that country.

With regard to the principle of *non-refoulment,* it was noted that the principle should apply even though the persons concerned had not been formally recognized as refugees. That interpretation was confirmed by the twenty-eighth session of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees.[84]

In the period under review a number of States continued to resort to measures of expulsion with respect to asylum-seekers without regard to their possible refugee character, merely on the ground of their illegal entry or presence and without due regard to article 31 of the United Nations Convention of 1951 which, under certain conditions, prohibits the imposition of penalties, on account of such illegal entry or presence, or refugees coming directly from a territory where they feared prosecution.

The enjoyment of economic and social rights was also of great importance to asylum-seekers pending the determination of their status. Many countries did not differentiate between refugees and asylum-seekers with respect to their economic and social rights. In an effort to discourage further arrivals, a few

countries had, however, maintained or introduced new measures curtailing the granting of social and economic rights to asylum-seekers.

The determination of refugee status was an important element in ensuring that refugees were in a position to take advantage of their various rights. Formal procedures for determining refugee status were essential and their importance had been emphasized by the General Assembly of the United Nations and the Executive Committee. While neither the 1951 Convention nor the 1967 Protocol indicated the type of procedures to be adopted by States, it had been recognized that all procedures for determining refugee status should meet the basic requirements set out in the conclusion on the determination of refugee status adopted by the Executive Committee at its twenty-eighth session.[85]

The standards for treatment of refugees and the rights to be accorded to them, as defined in the 1951 Convention and the 1967 Protocol, had been supplemented and further developed by provisions contained in various instruments adopted at the regional level. The adoption and acceptance by States of such additional standard-setting instruments was of prime importance in providing protection to refugees and in identifying solutions to current refugee situations.

UNHCR continued to strengthen its activities in the field of the promotion, advancement and dissemination of the principles of refugee law. UNHCR also continued to maintain close contact with regional intergovernmental organizations with a view to promoting the development of refugee law at the regional level. For that purpose, the Office collaborated closely with, *inter alia,* the Council of Europe, the Organization of the Islamic Conference, the League of Arab States, the Organization of African Unity, the Organization of American States and the Asian-African Legal Consultative Committee. Increased promotional activities were also undertaken by UNHCR field offices which, among other activities, organized training courses for governmental officials and seminars and refugee law courses at local universities and published information brochures relating to protection of refugees and refugee law. A fundamental component of the promotion activities of UNHCR was the publication of its magazine *Refugees.* Progress was achieved in developing the UNHCR Refugee Documentation Centre into an important resource facility for UNHCR staff and scholars of refugee law and integration.

At the thirty-seventh session of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees, held at Geneva from 6 to 13 October 1986, the Committee welcomed the accessions of Equatorial Guinea, Tuvalu, Papua New Guinea and Venezuela to the 1951 Convention and the 1967 Protocol, thereby bringing to over 100 the number of States parties to those basic humanitarian instruments, and welcomed the efforts of the Office to promote further accessions to those instruments; reiterated the importance of national legislative and/or administrative measures to ensure the effective implementation of the standards defined in applicable international refugee instruments; reaffirmed the importance of the Office's efforts to promote the development and strengthening of international refugee law through the organization or support of round tables, seminars and discussion groups in different areas of the world and to ensure that the principles of international refugee law were as widely disseminated as possible; stressed the urgency and importance of the question of military and armed attacks on refugee camps and settlements being

kept under constant review by the Executive Committee with a view to reaching agreement on a set of principles or conclusions in order to reinforce the international protection of refugees; adopted conclusions on detention of refugees and asylum-seekers; recognized the value of international instruments defining standards for the treatment of refugees at the regional level; recognized that the 1951 Convention and the 1967 Protocol incorporated fundamental principles of refugee law, including the principal of *non-refoulement,* and laid down minimum standards for the treatment of refugees and thus constituted the cornerstone of international protection; called upon States not having acceded to those instruments to accede to them and expressed hope that by the fortieth anniversary of the adoption of the 1951 Convention, all States Member of the United Nations would have acceded to those instruments; recommended consideration of withdrawal of the geographical limitation and reservations to those instruments by those States that still maintained them; recalled that the 1951 Convention and the 1967 Protocol were complemented by various international instruments of relevance to refugees adopted at the universal level and by a number of standard-setting instruments adopted at the regional level, and called upon States to consider acceding to such additional universal instruments and to such other instruments as were applicable to their region; and recommended to States that had not yet done so to consider adopting appropriate legislative and/or administrative measures for the effective implementation of the international refugee instruments, making the necessary distinction between refugees and other aliens.

By its resolution 41/124 of 4 December 1986,[86] adopted on the recommendation of the Third Committee,[87] the General Assembly strongly reaffirmed the fundamental nature of the High Commissioner for Refugees' function to provide international protection and the need for Governments to continue to cooperate fully with his Office in order to facilitate the effective exercise of this function, in particular by acceding to and implementing the relevant international and regional refugee instruments and by scrupulously observing the principles of asylum and *non-refoulement;* appealed to all States that had not yet become parties to the 1951 Convention and the 1967 Protocol to consider acceding to them in order to enhance their universal character; condemned all violations of the rights and safety of refugees and asylum-seekers, in particular those perpetrated by military or armed attacks against refugee camps and settlements and other forms of brutality and the failure to rescue asylum-seekers in distress at sea; welcomed the conclusions on detention of refugees and asylum-seekers adopted by the Executive Committee of the Programme of the High Commissioner at its thirty-seventh session;[88] and recognized the importance of finding durable solutions to refugee problems and recognized also that the search for durable solutions included the need to address the causes of movements of refugees and asylum-seekers from their countries of origin.

(*c*) International drug control

In the course of 1986, one more State became party to the 1961 Single Convention on Narcotic Drugs,[89] four more States became parties to the 1971 Convention on Psychotropic Substances[90] and one more State became party to the Single Convention on Narcotic Drugs, 1961, as amended by the Protocol of 25 March 1972 amending the Single Convention on Narcotic Drugs, 1961.[91]

By its resolution 41/126 of 4 December 1986,[92] adopted on the recommendation of the Third Committee,[93] the General Assembly, recognizing that the preliminary draft convention prepared by the Secretary-General in compliance with Commission on Narcotic Drugs resolution 1 (S-IX) of 14 February 1986[94] constituted a positive step in the preparation of the convention and that the elements included in the draft corresponded to many of the interests of the international community in its efforts to confront the problem of illicit drug trafficking, expressed its appreciation to and commended the Secretary-General for his effective response to the request made in paragraph 4 of Commission on Narcotic Drugs resolution 1 (S-IX), entitled "Guidance on the drafting of an international convention to combat drug trafficking", in which the Commission requested that a preliminary draft of a convention be prepared containing the elements specified in paragraph 3 of that resolution and that the draft be circulated to members of the Commission and other interested Governments; requested the Commission, through the Economic and Social Council, to continue at its thirty-second regular session its work on the preparation of a draft convention against illicit traffic in narcotic drugs and psychotropic substances in the most expeditious manner, so that it might be effective, and widely acceptable, and entered into force at the earliest possible time; requested the Secretary-General to submit to the International Conference on Drug Abuse and Illicit Drug Trafficking, to be held in 1987, a report on progress achieved in the preparation of a new convention against illicit drug trafficking; and once again urged all States that had not yet done so to ratify and to accede to the Single Convention on Narcotic Drugs of 1961, the 1972 Protocol Amending the Single Convention on Narcotic Drugs of 1961 and the Convention on Psychotropic Substances of 1971.

(*d*) Human rights questions

(1) *Status and implementation of international instruments*

(i) *International Covenants on Human Rights*[95]

In 1986, two more States became parties to the International Covenant on Economic, Social and Cultural Rights,[96] four more States became parties to the International Covenant on Civil and Political Rights[97] and two more States became parties to the Optional Protocol to the International Covenant on Civil and Political Rights.[98]

By its resolution 41/119 of 4 December 1986,[99] adopted on the recommendation of the Third Committee,[100] the General Assembly took note with appreciation of the report of the Human Rights Committee on its twenty-sixth, twenty-seventh and twenty-eighth sessions;[101] again urged all States that had not yet done so to become parties to the International Covenants on Human Rights as well as to consider acceding to the Optional Protocol to the International Covenant on Civil and Political Rights; invited the States parties to the International Covenant on Civil and Political Rights to consider making the declaration provided for in article 41 of the Covenant; recommended to States parties that they continually review whether any reservation made in respect of the provisions of the International Covenants on Human Rights should be upheld; and encouraged all Governments to publish the texts of the International Covenants

on Human Rights in as many languages as possible and to distribute them and make them known as widely as possible in their territories. Furthermore, by its resolution 41/117 of the same date,[102] adopted also on the recommendation of the Third Committee,[103] the Assembly called upon all States to cooperate in creating national and international conditions conducive to the enjoyment of all human rights and fundamental freedoms; requested the Commission on Human Rights to continue its consideration of the realization of economic, social and cultural rights and to submit to the General Assembly at its forty-second session, through the Economic and Social Council, its views and recommendations on those human rights; and welcomed the establishment by the Economic and Social Council of the Committee on Economic, Social and Cultural Rights,[104] which would be entrusted from 1987 on with the important task of overseeing the implementation of the International Covenant on Economic, Social and Cultural Rights. Moreover, by its resolution 41/32 of 3 November 1986,[105] the General Assembly invited all States to commemorate the twentieth anniversary of the adoption of the International Covenants on Human Rights by continuing and strengthening measures aimed at the implementation, promotion and protection of the provisions of those instruments; invited also the appropriate United Nations bodies, the specialized agencies and regional intergovernmental organizations and non-governmental organizations to take appropriate measures to celebrate the anniversary; and reaffirmed, on that occasion, that, in order to contribute to the realization of the purposes and to the implementation of the principles of the Charter of the United Nations, States should pursue policies directed to the full implementation of the rights referred to in those instruments.

(ii) *International Convention on the Elimination of All Forms of Racial Discrimination*[106]

In 1986, no additional State became party to the International Convention on the Elimination of All Forms of Racial Discrimination.

By its resolution 41/104 of 4 December 1986,[107] adopted on the recommendation of the Third Committee,[108] the General Assembly took note of the report of the Secretary-General on the status of the International Convention on the Elimination of All Forms of Racial Discrimination;[109] reaffirmed once again its conviction that ratification of or accession to the Convention on a universal basis and implementation of its provisions were necessary for the realization of objectives of the Second Decade to Combat Racism and Racial Discrimination;[110] requested those States that had not yet become parties to the Convention to ratify it or accede thereto; and called upon the States parties to the Convention to consider the possibility of making the declaration provided for in article 14 of the Convention. Moreover, by its resolution 41/105 of the same date,[111] adopted also on the recommendation of the Third Committee,[112] the Assembly expressed its grave concern that the Committee on the Elimination of Racial Discrimination, because of the lack of financial means, was unable to hold its thirty-fourth session and to carry out its obligations in the course of 1986 and that, consequently, it could not submit an annual report to the General Assembly at its forty-first session; called upon States parties to comply fully with their obligation under article 9, paragraph 1, of the Convention and to submit in due time their periodic reports on measures taken to implement the Convention; and appealed urgently to States parties to fulfil their financial obligations under article 8, paragraph 6, of the Convention so as to enable the Committee to resume its work.

(iii) *International Convention on the Suppression and Punishment of the Crime of Apartheid*[113]

In 1986, three more States became parties to the International Convention on the Suppression and Punishment of the Crime of Apartheid.

By its resolution 41/103 of 4 December 1986,[114] adopted on the recommendation of the Third Committee,[115] the General Assembly took note of the report of the Secretary-General on the status of the International Convention on the Suppression and Punishment of the Crime of Apartheid;[116] appealed once again to those States that had not yet done so to ratify or to accede to the Convention without further delay, in particular those States that had jurisdiction over transnational corporations operating in South Africa and Namibia and without whose cooperation such operations could not be halted; took note with appreciation of the report of the Group of Three of the Commission on Human Rights, established in accordance with article IX of the Convention, and, in particular, of the conclusions and recommendations contained in that report;[117] drew the attention of all States to the opinion expressed by the Group of Three in its report that transnational corporations operating in South Africa and Namibia must be considered accomplices in the crime of apartheid, in accordance with article III (*b*) of the Convention; requested the Commission on Human Rights to intensify, in cooperation with the Special Committee against Apartheid, its efforts to compile periodically the progressive list of individuals, organizations, institutions and representatives of States deemed responsible for crimes enumerated in article II of the Convention, as well as those against whom legal proceedings had been undertaken; and requested the Secretary-General to intensify his efforts, thorough appropriate channels, to disseminate information on the Convention and its implementation with a view to promoting further ratification of or accession to the Convention.

(iv) *Convention on the Elimination of All Forms of Discrimination against Women*[118]

In 1986, seven more States became parties to the Convention on the Elimination of All Forms of Discrimination against Women.

By its resolution 41/108 of 4 December 1986,[119] adopted on the recommendation of the Third Committee,[120] the General Assembly noted with appreciation the increasing number of Member States that had ratified or acceded to the Convention on the Elimination of All Forms of Discrimination against Women; urged all States that had not yet ratified or acceded to the Convention to do so as soon as possible; took note of the report of the Secretary-General on the status of the Convention;[121] and also took note of the general recommendation and suggestion adopted by the Committee on the Elimination of Discrimination against Women pursuant to its discussion at its fifth session on ways and means of implementing article 21 of the Convention.[122]

(v) *Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment*[123]

By its resolution 41/134 of 4 December 1986,[124] adopted on the recommendation of the Third Committee,[125] the General Assembly took note with appreciation of the report of the Secretary-General on the status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punish-

ment;[126] requested all States that had not yet done so to become parties to the Convention as a matter or priority; and invited all States, upon ratification of or accession to the Convention, to consider the possibility of making the declarations provided for in articles 21 and 22 of the Convention.

(vi) *International Convention against Apartheid in Sports*

By its resolution 41/35 E of 10 November 1986,[127] the General Assembly, recalling its resolution 40/64 G of 10 December 1985, by which it had adopted and opened for signature and ratification the International Convention against Apartheid in Sports,[128] expressed its satisfaction at the significant number of States that had signed and ratified the Convention since it had been solemnly opened for signature, ratification and accession on 16 May 1986; and appealed to those States that had not yet done so to sign and ratify or accede to the Convention without further delay.

(2) *Fortieth anniversary of the Universal Declaration of Human Rights*

By its resolution 41/150 of 4 December 1986,[129] adopted on the recommendation of the Third Committee,[130] the General Assembly decided to celebrate in 1988 the fortieth anniversary of the Universal Declaration of Human Rights; and invited Member States, the specialized agencies, regional intergovernmental organizations and non-governmental organizations to take appropriate measures, such as those set forth in the annex to the resolution, and to support appropriate activities aimed at encouraging the promotion of the universal observance and enjoyment of civil and political rights, as well as economic, social and cultural rights.

(3) *Universal realization of the right of peoples to self-determination*

By its resolution 41/100 of 4 December 1986,[131] adopted on the recommendation of the Third Committee,[132] the General Assembly took note of the report of the Secretary-General,[133] reaffirmed that the universal realization of the right of all peoples, including those under colonial, foreign and alien domination, to self-determination was a fundamental condition for the effective guarantee and observance of human rights and for the preservation and promotion of such rights; and requested the Commission on Human Rights to continue to give special attention to the violation of human rights, especially the right to self-determination, resulting from foreign military intervention, aggression or occupation. Furthermore, by its resolution 41/101 of the same date,[134] adopted also on the recommendation of the Third Committee,[135] the Assembly called upon all States to implement fully and faithfully all the resolutions of the United Nations regarding the exercise of the right to self-determination and independence by peoples under colonial and foreign domination; reaffirmed the legitimacy of the struggle of peoples for their independence, territorial integrity, national unity and liberation from colonial domination, apartheid and foreign domination by all available means, including armed struggle; reaffirmed the inalienable right of Namibian people, the Palestinian people and all peoples under foreign and colonial domination to self-determination, national independence, territorial integrity, national unity and sovereignty without foreign interference; called for full and immediate implementation of the declarations and programmes of action on Namibia and on Palestine by the international conferences on those questions;

demanded the immediate and unconditional release of all persons detained or imprisoned as a result of their struggle for self-determination and independence, full respect for their fundamental individual rights and compliance with article 5 of the Universal Declaration of Human Rights,[136] under which no one should be subjected to torture or to cruel, inhuman or degrading treatment; and urged all States, the specialized agencies and other competent organizations of the United Nations system to do their utmost to ensure the full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples[137] and to intensify their efforts to support peoples under colonial, foreign and racist domination in their just struggle for self-determination and independence.

(4) *Question of a convention on rights of the child*

By its resolution 41/116 of 4 December 1986,[138] adopted on the recommendation of the Third Committee,[139] the General Assembly, noting with appreciation that further progress had been made during the forty-second session of the Commission on Human Rights in the elaboration of a draft convention on the rights of the child,[140] requested the Commission to give the highest priority to, and to make every effort at its forty-third session to complete, the draft convention and to submit it, through the Economic and Social Council, to the General Assembly at its forty-second session.

(5) *Human rights and scientific and technological developments*

By its resolution 41/115 of 4 December 1986,[141] adopted on the recommendation of the Third Committee,[142] the General Assembly, taking note with satisfaction of the report of the Secretary-General on human rights and scientific and technological developments,[143] stressed the importance of the implementation by all States of the provisions and principles contained in the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind[144] in order to promote human rights and fundamental freedoms; and called upon all States to make every effort to use the achievements of science and technology in order to promote peaceful social, economic and cultural development and progress. Furthermore, by its resolution 41/113 of the same date,[145] adopted also on the recommendation of the Third Committee,[146] the Assembly called upon all States, appropriate United Nations bodies, specialized agencies and intergovernmental and non-governmental organizations concerned to take the necessary measures to ensure that the results of scientific and technological progress were used exclusively in the interests of international peace, for the benefit of mankind and for promoting and encouraging universal respect for human rights and fundamental freedoms. Moreover, by its resolution 41/114, also of the same date,[147] adopted as well on the recommendation of the Third Committee,[148] the General Assembly, expressing deep concern at the repeated evidence of the misuse of psychiatry to detain persons on non-medical grounds, as reflected in the report of the Special Rapporteur of the Subcommission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights,[149] reaffirmed its conviction that detention of persons in mental institutions on account of their political views or on other non-medical grounds was a violation of their human rights; and again urged the Commission and, through it, the Subcommission to expedite their consideration of the draft body of guidelines, principles and guarantees related to the protection

of those detained on the grounds of mental ill-health, so that the Commission could submit its views and recommendations, including a draft body of guidelines, principles and guarantees, to the General Assembly at its forty-third session, through the Economic and Social Council.

(6) *Right to development*

By its resolution 41/128 of 4 December 1986,[150] adopted on the recommendation of the Third Committee,[151] the General Assembly adopted the Declaration on the Right to Development, the text of which was annexed to the resolution.

ANNEX

Declaration on the Right to Development

The General Assembly,

Bearing in mind the purposes and principles of the Charter of the United Nations relating to the achievement of international cooperation in solving international problems of an economic, social, cultural or humanitarian nature, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Recognizing that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom,

Considering that under the provisions of the Universal Declaration of Human Rights everyone is entitled to a social and international order in which the rights and freedom set forth in that Declaration can be fully realized,

Recalling the provisions of the International Covenant on Economic, Social and Cultural Rights and of the International Covenant on Civil and Political Rights,

Recalling further the relevant agreements, conventions, resolutions, recommendations and other instruments of the United Nations and its specialized agencies concerning the integral development of the human being, economic and social progress and development of all peoples, including those instruments concerning decolonization, the prevention of discrimination, respect for and observance of, human rights and fundamental freedoms, the maintenance of international peace and security and the further promotion of friendly relations and cooperation among States in accordance with the Charter,

Recalling the right of peoples to self-determination, by virtue of which they have the right freely to determine their political status and to pursue their economic, social and cultural development,

Recalling also the right of peoples to exercise, subject to the relevant provisions of both International Covenants on Human Rights, full and complete sovereignty over all their natural wealth and resources,

Mindful of the obligation of States under the Charter to promote universal respect for and observance of human rights and fundamental freedoms for all without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Considering that the elimination of the massive and flagrant violations of the human rights of the peoples and individuals affected by situations such as those resulting from colonialism, neo-colonialism, apartheid, all forms of racism and racial discrimination, foreign domination and occupation, aggression and threats against national sovereignty, national unity and territorial integrity and threats of war would contribute to the establishment of circumstances propitious to the development of a great part of mankind,

Concerned at the existence of serious obstacles to development, as well as to the complete fulfilment of human beings and of peoples, constituted, *inter alia*, by the denial of

civil, political, economic, social and cultural rights and considering that all human rights and fundamental freedoms are indivisible and interdependent and that, in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights and that, accordingly, the promotion of, respect for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms,

Considering that international peace and security are essential elements for the realization of the right to development,

Reaffirming that there is a close relationship between disarmament and development and that progress in the field of disarmament would considerably promote progress in the field of development and that resources released through disarmament measures should be devoted to the economic and social development and well-being of all peoples and, in particular, those of the developing countries,

Recognizing that the human person is the central subject of the development process and that development policy should therefore make the human being the main participant and beneficiary of development,

Recognizing that the creation of conditions favourable to the development of peoples and individuals is the primary responsibility of their States,

Aware that efforts at the international level to promote and protect human rights should be accompanied by efforts to establish a new international economic order,

Confirming that the right to development is an inalienable human right and that equality of opportunity for development is a prerogative both of nations and of individuals who make up nations,

Proclaims the following Declaration on the Right to Development:

Article 1

1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

2. The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

Article 2

1. The human person is the central subject of development and should be the active participant and beneficiary of the right to development.

2. All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone ensure the free and complete fulfilment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development.

3. States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.

Article 3

1. States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development.

2. The realization of the right to development requires full respect for the principles of international law concerning friendly relations and cooperation among States in accordance with the Charter of the United Nations.

3. States have the duty to cooperate with each other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfil their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and cooperation among all States, as well as to encourage the observance and realization of human rights.

Article 4

1. States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development.

2. Sustained action is required to promote more rapid development of developing countries. As a complement to the efforts of developing countries, effective international cooperation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development.

Article 5

States shall take resolute steps to eliminate the massive and flagrant violations of the human rights of peoples and human beings affected by situations such as those resulting from apartheid, all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against sovereignty, national unity and territorial integrity, threats of war and refusal to recognize the fundamental right of peoples to self-determination.

Article 6

1. All States should cooperate with a view to promoting, encouraging and strengthening universal respect for and observance of all human rights and fundamental freedoms for all without any distinction as to race, sex, language or religion.

2. All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights.

3. States should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic, social and cultural rights.

Article 7

All States should promote the establishment, maintenance and strengthening of international peace and security and, to that end, should do their utmost to achieve general and complete disarmament under effective international control, as well as to ensure that the resources released by effective disarmament measures are used for comprehensive development, in particular that of the developing countries.

Article 8

1. States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, *inter alia,* equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices.

2. States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights.

Article 9

1. All the aspects of the right to development set forth in the present Declaration are indivisible and interdependent and each of them should be considered in the context of the whole.

2. Nothing in the present Declaration shall be construed as being contrary to the purposes and principles of the United Nations, or as implying that any State, group or

person has a right to engage in any activity or to perform any act aimed at the violation of the rights set forth in the Universal Declaration of Human Rights and in the International Covenants on Human Rights.

Article 10

Steps should be taken to ensure the full exercise and progressive enhancement of the right to development, including the formulation, adoption and implementation of policy, legislative and other measures at the national and international levels.

Furthermore, by its resolution 41/133 of the same date,[152] adopted also on the recommendation of the Third Committee,[153] the General Assembly declared that the achievement of the right to development required a concerted international and national effort to eliminate economic deprivation, hunger and disease in all parts of the world without discrimination in accordance with the Declaration and the Programme of Action on the Establishment of a New International Economic Order,[154] the International Development Strategy for the Third United Nations Development Decade[155] and the Charter of Economic Rights and Duties of States.[156]

(7) *Respect for the right of everyone to own property alone as well as in association with others and its contribution to the economic and social development of Member States*

By its resolution 41/132 of 4 December 1986,[157] adopted on the recommendation of the Third Committee,[158] the General Assembly recognized that there existed in Member States many forms of legal property ownership, including private, communal, and state forms, each of which should contribute to ensuring effective development and utilization of human resources through the establishment of sound bases for political, economic and social justice; affirmed, in accordance with article 30 of the Universal Declaration of Human Rights, that nothing in the Declaration, including the right of everyone to own property alone as well as in association with others, might be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth therein; invited the regional commissions to consider the relationship between the full enjoyment of the right of everyone to own property alone as well as in association with others, as set forth in article 17 of the Declaration, and the economic and social development of Member States; and requested the Secretary-General to prepare a report on the subject, taking into account the views of Member States, specialized agencies and other competent bodies of the United Nations system.

(8) *Measures to improve the situation and ensure the human rights and dignity of all migrant workers*

By its resolution 41/151 of 4 December 1986,[159] adopted on the recommendation of the Third Committee,[160] the General Assembly took note with satisfaction of the report of the Working Group on the Drafting of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families,[161] and, in particular, of the progress made by the Working Group on the drafting, in second reading, of the draft convention; and decided that the Working Group should meet during the forty-second session of the General

Assembly to continue the second reading of the draft international convention on the protection of the rights of all migrant workers and their families.

(9) *International cooperation to avert new flows of refugees*

By its resolution 41/70 of 3 December 1986,[162] adopted on the recommendation of the Special Political Committee,[163] the General Assembly commended the Group of Governmental Experts on International Cooperation to Avert New Flows of Refugees for the work it had accomplished by consensus, as reflected in its report;[164] endorsed the conclusions and recommendations contained in the report; called upon Member States to respect, for the purpose of improving international cooperation to avert new massive flows of refugees, the recommendations and, in particular, to comply with those contained in paragraphs 66, 67 and 69 of the report; and urged the main organs of the United Nations to make fuller use of their respective competences under the Charter of the United Nations for the prevention of new, massive flows of refugees, as envisaged in paragraph 68 of the report.

(10) *Human rights in the administration of justice*

By its resolution 41/149 of 4 December 1986,[165] adopted on the recommendation of the Third Committee,[166] the General Assembly, convinced of the need for further coordinated and concerted action in promoting respect for human rights in the administration of justice, welcomed the recommendations made by the Economic and Social Council in its resolution 1986/10 on the more effective application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,[167] the Basic Principles on the Independence of the Judiciary,[168] the Code of Conduct for Law Enforcement Officials[169] and the safeguards guaranteeing protection of the rights of those facing the death penalty; welcomed also the recommendations made by the Council in its resolution 1986/10 on the prevention and investigation of extra-legal, arbitrary or summary executions and on new developments in the area of human rights in criminal justice and international cooperation, including the role of lawyers and model agreements in criminal justice; encouraged the Subcommission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights to give urgent consideration to the issue of the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers, taking into account the report of its Special Rapporteur on that subject;[170] reiterated its call upon Member States to spare no effort in providing for adequate mechanisms, procedures and resources so as to ensure the effective implementation of existing standards, both in legislation and in practice; and requested the Economic and Social Council and, through it, the Committee on Crime Prevention and Control to keep those matters under constant review and to continue to give special attention to effective ways and means of implementing existing standards and to new developments in that area.

(11) *Summary or arbitrary executions*

By its resolution 41/144 of 4 December 1986,[171] adopted on the recommendation of the Third Committee,[172] the General Assembly strongly condemned once again the large number of summary or arbitrary executions, including extra-legal executions, which continued to take place in various parts of the world; demanded that the practice of summary or arbitrary executions be brought to an end; endorsed the recommendation of the Special Rapporteur in his report[173] to

the Commission on Human Rights at its forty-second session on the need to develop international standards to ensure that proper investigations were conducted by appropriate authorities into all cases of suspicious death, including provisions for adequate autopsy; again requested the Secretary-General to continue to use his best endeavours in cases where the minimum standard of legal safeguards provided for in articles 6, 14 and 15 of the International Covenant on Civil and Political Rights appeared not to be respected; and requested the Commission on Human Rights at its forty-third session, on the basis of the report of the Special Rapporteur to be prepared in conformity with the Economic and Social Council resolutions 1982/35, 1983/36, 1984/35, 1985/40 and 1986/36, to make recommendations concerning appropriate action to combat and eventually eliminate the abhorrent practice of summary or arbitrary executions.

(12) *Measures to be taken against Nazi, Fascist and neo-Fascist activities and all other forms of totalitarian ideologies and practices based on racial intolerance, hatred and terror*

By its resolution 41/160 of 4 December 1986,[174] adopted on the recommendation of the Third Committee,[175] the General Assembly again condemned all totalitarian or other ideologies and practices, including Nazi, Fascist and neo-Fascist ideologies, based on racial, ethnic or other exclusiveness or intolerance, hatred and terror, which deprived people of basic human rights and fundamental freedoms and of equality of opportunity, and expressed its determination to combat those ideologies and practices; urged all States to draw attention to the threats to democratic institutions by the above-mentioned ideologies and practices and to consider taking measures, in accordance with their national constitutional systems and with the provisions of the Universal Declaration of Human Rights and the International Covenants on Human Rights to prohibit or otherwise deter activities of groups or organizations or whoever was practising those ideologies; and invited Member States to adopt, as a matter of high priority, measures declaring punishable by law any dissemination of ideas based on racial superiority or hatred and of war propaganda, including Nazi, Fascist and neo-Fascist ideologies.

(13) *Elimination of all forms of religious intolerance*

By its resolution 41/112 of 4 December 1986,[176] adopted on the recommendation of the Third Committee,[177] the General Assembly reaffirmed that freedom of thought, conscience, religion and belief was a right guaranteed to all without discrimination; urged States, therefore, in accordance with their respective constitutional systems and with such internationally accepted instruments as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, to provide, where they had not already done so, adequate constitutional and legal guarantees of freedom of thought, conscience, religion and belief; noted with appreciation that work had already been begun in the Commission on Human Rights on the preparation of a compendium of the national legislation and regulations of States on the question of freedom of religion or belief; requested the Commission to urge the Subcommission on Prevention of Discrimination and Protection of Minorities to accord high priority at its thirty-ninth session to consideration of the study prepared by its Special Rapporteur, in accordance with the terms of Subcommission resolution 1983/31 of 6 September 1983[178] on the current dimensions of the problems of intolerance and of discrimination on the grounds of religion or belief, and to report on this

matter to the Commission at its forty-fourth session; and invited the Secretary-General to continue to give high priority to the dissemination of the text of the Declaration on the Elimination of all Forms of Intolerance and Discrimination Based on Religion or Belief,[179] in all the official languages of the United Nations, and to take all appropriate measures to make the text available for use by United Nations information centres, as well as by other interested bodies.

(14) *Setting international standards in the field of human rights*

By its resolution 41/120 of 4 December 1986,[180] adopted on the recommendation of the Third Committee,[181] the General Assembly, emphasizing the primacy of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in the extensive network of international standards in the field of human rights, recognizing the value of continuing efforts to identify specific areas where further international action was required to develop the existing international legal framework in the field of human rights pursuant to Article 13, paragraph 1 a, of the Charter of the United Nations, recognizing also that standard setting should proceed with adequate preparation, and emphasizing that the standard-setting activities of the United Nations should be as effective and efficient as possible, called upon Member States and United Nations bodies to accord priority to the implementation of existing international standards in the field of human rights and urged broad ratification of, or accession to, existing treaties in that field; urged Member States and United Nations bodies engaged in developing new international human rights standards to give due consideration in that work to the established international legal framework; reaffirmed the important role of the Commission on Human Rights, among other appropriate United Nations bodies, in the development of international instruments in the field of human rights; and invited Member States and United Nations bodies to bear in mind the following guidelines in developing international instruments in that field; such instruments should, *inter alia:* (*a*) be consistent with the existing body of international human rights law; (*b*) be of fundamental character and derive from the inherent dignity and worth of the human person; (*c*) be sufficiently precise to give rise to identifiable and practicable rights and obligations; (*d*) provide, where appropriate, realistic and effective implementation machinery, including reporting systems; and (*e*) attract broad international support.

(15) *Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms*

By its resolution 41/131 of 4 December 1986,[182] adopted on the recommendation of the Third Committee,[183] the General Assembly reiterated its request that the Commission on Human Rights continue its current work on the overall analysis with a view to further promoting and improving human rights and fundamental freedoms, including the question of the Commission's programme and working methods, and on the overall analysis of the alternative approaches and ways and means for improving the effective enjoyment of human rights and fundamental freedom, in accordance with the provisions and concepts of General Assembly resolution 32/130 of 16 December 1977 and other relevant texts; affirmed that a primary aim of international cooperation in the field of human rights was a life of freedom, dignity and peace for all peoples and for each human

being, and all human rights and fundamental freedoms were indivisible and interrelated and that the promotion and protection of one category of rights should never exempt or excuse States from the promotion and protection of the others; reiterated once again that the international community should accord, or continue to accord, priority to the search for solutions to mass and flagrant violations of human rights of peoples and individuals affected by situations such as those mentioned in paragraph 1(*e*) of resolution 32/130, paying due attention also to other situations of violations of human rights; reaffirmed that international peace and security were essential elements in achieving the full realization of the right to development; recognized that all human rights and fundamental freedoms were indivisible and interdependent; considered it necessary that all Member States promote international cooperation on the basis of respect for the independence, sovereignty and territorial integrity of each State, including the right of each people to choose freely its own socio-economic and political system and to exercise full sovereignty over its wealth and natural resources, subject to the principles referred to in article 1, paragraph 2, and article 25 of the International Covenant on Economic, Social and Cultural Rights, with a view to resolving international problems of an economic, social and humanitarian character; reaffirmed once again that, in order to facilitate the full enjoyment of all rights and complete personal dignity, it was necessary to promote the rights to education, work, health and proper nourishment through the adoption of measures at the national level, including those that provided for workers' participation in management, as well as the adoption of measures at the international level, including the establishment of the new international economic order; and once again requested the Commission on Human Rights to take the necessary measures to promote the right to development. Furthermore, by its resolution 41/129 of the same date,[184] adopted also on the recommendation of the Third Committee,[185] the Assembly emphasized the importance of developing, in accordance with national legislation, effective national institutions for the protection and promotion of human rights, and of maintaining their independence and integrity; encouraged all Member States to take appropriate steps for the establishment or, where they already existed, the strengthening of national institutions for the protection and promotion of human rights; and encouraged the Secretary-General to complete as soon as possible and to submit to the General Assembly, through the Commission on Human Rights and the Economic and Social Council, a consolidated report, for eventual publication as a United Nations handbook, on national institutions for the use of Governments, including information on the various types and models of national and local institutions for the protection and promotion of human rights, taking into account differing social and legal systems. Moreover, by its resolution 41/130 of the same date,[186] adopted as well on the recommendation of the Third Committee,[187] the General Assembly took note of the report of the Secretary-General on the development of public information activities in the field of human rights;[188] requested all Member States to publicize and to facilitate and encourage publicity for the activities of the United Nations in the field of human rights and to accord priority to the dissemination, in their respective national and local languages, of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international conventions; recommended that all Member States include in their educational curricula materials relevant to a comprehensive understanding of human rights issues; requested the Secretary-General to finalize work on a draft teaching

booklet on basic human rights and to draw the attention of Member States to that document, which could serve as a broad and flexible framework within which teaching could be structured and developed in accordance with national circumstances; and also requested the Secretary-General to arrange for the reprinting as soon as practicable of the publication entitled *Human Rights: A Compilation of International Instruments.*[189]

(16) *Reporting obligations under United Nations instruments on human rights*

By its resolution 41/121 of 4 December 1986,[190] adopted on the recommendation of the Third Committee,[191] the General Assembly, reiterating the fundamental importance it attached to the fulfilment of reporting obligations under international instruments on human rights, urged States parties with overdue reports to make every effort to present their reports as soon as possible and to take advantage of opportunities whereby such reports could be consolidated; requested the Secretary-General to continue work on developing a compilation of the general guidelines elaborated by the various supervisory bodies and the list of articles dealing with related rights under United Nations instruments on human rights; invited the Chairmen of the supervisory bodies to encourage their respective members: (*a*) to give priority attention to consideration of remedial measures to deal with the problems highlighted in the Secretary-General's report on the subject;[192] (*b*) to give further consideration to harmonizing and consolidating the reporting guidelines developed by those bodies and to other means whereby duplication could be avoided in the submission of material by States parties to the various supervisory bodies; (*c*) to consider rearranging, where possible, the periodicity of reporting, especially in view of the future probable increase in the number of instruments; and (*d*) to report on the results of their deliberations to the appropriate meetings of States parties; and invited the new Committee on Economic, Social and Cultural Rights[193] to give early attention to the question of the reporting system on implementation of the International Covenant on Economic, Social and Cultural Rights, taking due account of reporting guidelines developed by the Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cutural Rights.[194]

(17) *Regional arrangements for the promotion and protection of human rights*

By its resolution 41/154 of 4 December 1986,[195] adopted on the recommendation of the Third Committee,[196] the General Assembly took note of the report of the Secretary-General on regional arrangements for the promotion and protection of human rights;[197] and endorsed the recommendations of the Commission on Human Rights in its resolution 1986/52 that Governments in need of technical assistance in the field of human rights should be encouraged (*a*) to make use of the possibility offered by the United Nations of organizing, under the programme of advisory services in the field of human rights, information and/or training courses at the national level for appropriate government personnel on the application of international human rights standards and the experience of relevant international organs; and (*b*) to avail themselves of the advisory services of experts in the field of human rights, for example, for drafting basic legal texts in conformity with international conventions on human rights.

(e) Status of the Convention on the Prevention and Punishment of the Crime of Genocide[198]

By its resolution 41/147 of 4 December 1986,[199] adopted on the recommendation of the Third Committee,[200] the General Assembly took note of the report of the Secretary-General;[201] once again strongly condemned the crime of genocide; reaffirmed the necessity of international cooperation in order to liberate mankind from such an odious crime; and urged those States that had not yet become parties to the Convention on the Prevention and Punishment of the Crime of Genocide to ratify it or to accede thereto without further delay.

(f) Crime prevention and criminal justice

By its resolution 41/107 of 4 December 1986,[202] adopted on the recommendation of the Third Committee,[203] the General Assembly took note of the report of the Secretary-General on crime prevention and criminal justice;[204] urged Member States and the Secretary-General to make every effort to translate into action, as appropriate, the respective recommendations, policies and conclusions stemming from the Milan Plan of Action and other relevant resolutions and recommendations adopted unanimously by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders[205] and to ensure that they were adequately followed up; reaffirmed the importance of the United Nations congresses on the prevention of crime and the treatment of offenders and of adequate and timely preparations for such congresses by the Secretary-General and by Member States at national, regional and interregional levels; and invited Member States and the Secretary-General to ensure timely preparations for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

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4. LAW OF THE SEA

Status of the United Nations Convention on the Law of the Sea[206]

As of 31 December 1986, 159 States had signed and 31 States and the United Nations Council for Namibia had ratified the United Nations Convention on the Law of the Sea.

Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea[207]

The Preparatory Commission met twice during 1986. It held its fourth session at Kingston from 17 March to 11 April 1986, and a meeting in New York from 11 August to 5 September 1986.

At the fourth session of the Preparatory Commission the four States applicants for registration as pioneer investors undertook intensive consultations with various interest groups and individual delegations on the Arusha Understanding which provided a mechanism for resolving the overlap claims for mine sites in the north-east Pacific. At the New York meeting of the Commission those consultations continued, leading to the unanimous adoption of the understanding on 5 September 1986. The understanding took into account the interests of all groups of States as well as those of the Enterprise. In addition to the substantive matters, the understanding set out the procedures and the time frame for registra-

tion. In other developments, the Preparatory Commission adopted a declaration on 11 April 1986[208] reaffirming its declaration of 30 August 1985,[209] reiterating its rejection of any claim, agreement or action that was incompatible with the Convention and related resolutions, and asserting that such actions were wholly illegal and devoid of any basis for creating legal rights. The plenary of the Commission also completed the first reading of the draft rules of procedure of the Council and those of the Legal and Technical Commission. At the New York meeting the plenary began consideration of the draft rules of procedure of the Economic Planning Commission.

The four Special Commissions of the Preparatory Commission had been considering the substantive work allocated to them. Special Commission 1 was undertaking studies on the problems which would be encountered by developing land-based producer States from seabed mineral production. Having considered the likely list of States to be affected and the criteria for establishing dependency and the mineral exports likely to be affected by production of minerals from the seabed, the Commission had moved to consider remedial measures that might be undertaken. Special Commission 2, which dealt with the establishment of the Enterprise, considered the question of manpower requirements and training that it thought could be more effectively pursued once the registration of pioneer investors had been achieved. The Special Commission had decided to turn also to those matters that were internal to the Enterprise and relatively unaffected by economic conditions. Special Commission 3, which was preparing the rules, regulations and procedures for the exploration and exploitation of the deep seabed, continued with its consideration of the draft regulations on prospecting, exploration and exploitation of polymetallic nodules in the Area.[210] The Special Commission also dealt with the question of custody and confidentiality of data and information, the question of the application fee, the processing of applications and the conclusion of contracts. At the New York meeting the Special Commission took up the discussion of the financial terms of contracts contained in document LOS/PCN/SCN.3/WP.6/Add.2 and Corr.1. Special Commission 4 was dealing with the preparation of recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea. At the fourth session in Kingston the Special Commission completed its article-by-article examination of the draft rules of the Tribunal.[211] The Special Commission also discussed guidelines for draft rules in cases where an international organization was an applicant before the Tribunal or its chambers and the Tribunal *proprio motu* needed to examine, or the respondent claimed the right to raise the question of, the *locus standi* of the international organization. At the New York meeting the Special Commission began consideration of the revised draft rules. The discussion focused on those rules that were new and had been formulated as a result of a general discussion on the subject.

The Secretary-General's report in its part two also provided a general overview of the activities of the Office of the Special Representative of the Secretary-General for the Law of the Sea.

Consideration by the General Assembly

By its resolution 41/34 of 5 November 1986,[212] the General Assembly recalled the historic significance of the United Nations Convention on the Law of the Sea as an important contribution to the maintenance of peace, justice and progress for all peoples of the world; called upon all States that had not done so

to consider ratifying or acceding to the Convention at the earliest possible date to allow the effective entry into force of the new legal regime for the uses of the sea and its resources; called upon all States to safeguard the unified character of the Convention and related resolutions adopted therewith; also called upon States to observe the provisions of the Convention when enacting their national legislation; further called upon States to desist from taking actions which undermined the Convention or defeated its object and purpose; noted the progress being made by the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea in all areas of its work; and expressed its satisfaction at the important decision of the Preparatory Commission on 5 September 1986 that had created conditions for the early implementation of the regime for pioneer investors, contained in resolution II of the Third United Nations Conference on the Law of the Sea, thus facilitating the process of registration of applicants for pioneer investor status at the next session of the Preparatory Commission.

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5. INTERNATIONAL COURT OF JUSTICE[213,214]

Cases before the Court

A. CONTENTIOUS CASES BEFORE THE FULL COURT

(i) *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*[215]

On 27 June 1986, the Court delivered its Judgment at a public sitting.[216] Below is an analysis of the operative part of the Judgment.

I. *Recitals of the procedure* (paras. 1–17)

II. *Background to the dispute* (paras. 18–25)

III. *The non-appearance of the Respondent and Article 53 of the Statute* (paras. 26–31)

The Court recalls that subsequent to the delivery of its Judgment of 26 November 1984 on the jurisdiction of the Court and the admissibility of Nicaragua's Application, the United States decided not to take part in the present phase of the proceedings. This however does not prevent the Court from giving a decision in the case, but it has to do so while respecting the requirements of Article 53 of the Statute, which provides for the situation when one of the parties does not appear. The Court's jurisdiction being established, it has in accordance with Article 53 to satisfy itself that the claim of the party appearing is well founded in fact and law. In this respect the Court recalls certain guiding principles brought out in a number of previous cases, one of which excludes any possibility of a judgment automatically in favour of the party appearing. It also observes that it is valuable for the Court to know the views of the non-appearing party, even if those views are expressed in ways not provided for in the Rules of Court. The principle of the equality of the parties has to remain the basic principle, and the Court has to ensure that the party which declines to appear should not be permitted to profit from its absence.

IV. *Justiciability of the dispute* (paras. 32–35)

The Court considers it appropriate to deal with a preliminary question. It has been suggested that the questions of the use of force and collective self-defence raised in the case fall outside the limits of the kind of questions the Court can deal with, in other words that they are not justiciable. However, in the first place the Parties have not argued that the present dispute is not a "legal dispute" within the meaning of Article 36, paragraph 2, of the Statute, and secondly, the Court considers that the case does not necessarily involve it in evaluation of political or military matters, which would be to overstep proper judicial bounds. Consequently, it is equipped to determine these problems.

V. *The significance of the multilateral treaty reservation* (paras. 36–56)

The United States declaration of acceptance of the compulsory jurisdiction of the Court under Article 36, paragraph 2, of the Statute contained a reservation excluding from the operation of the declaration

> "disputes arising under a multilateral treaty, unless (1) all parties to the treaty affected by the decision are also parties to the case before the Court, or (2) the United States of America specially agrees to jurisdiction".

In its Judgment of 26 November 1984 the Court found, on the basis of Article 79, paragraph 7, of the Rules of Court, that the objection to jurisdiction based on the reservation raised a "question concerning matters of substance relating to the merits of the case" and that the objection did "not possess, in the circumstances of the case, an exclusively preliminary character". Since it contained both preliminary aspects and other aspects relating to the merits, it had to be dealt with at the stage of the merits.

In order to establish whether its jurisdiction was limited by the effect of the reservation in question, the Court has to ascertain whether any third States, parties to the four multilateral treaties invoked by Nicaragua, and not parties to the proceedings, would be "affected" by the Judgment. Of these treaties, the Court considers it sufficient to examine the position under the United Nations Charter and the Charter of the Organization of American States.

The Court examines the impact of the multilateral treaty reservation on Nicaragua's claim that the United States has used force in breach of the two Charters. The Court examines in particular the case of El Salvador, for whose benefit primarily the United States claims to be exercising the right of collective self-defence which it regards as a justification of its own conduct towards Nicaragua, the right being endorsed by the United Nations Charter (Art. 51) and the OAS Charter (Art. 21). The dispute is to this extent a dispute "arising under" multilateral treaties to which the United States, Nicaragua and El Salvador are Parties. It appears clear to the Court that El Salvador would be "affected" by the Court's decision on the lawfulness of resort by the United States to collective self-defence.

As to Nicaragua's claim that the United States has intervened in its affairs contrary to the OAS Charter (Art. 18) the Court observes that it is impossible to say that a ruling on the alleged breach of the Charter by the United States would not "affect" El Salvador.

Having thus found that El Salvador would be "affected" by the decision that the Court would have to take on the claims of Nicaragua based on violation of the two Charters by the United States, the Court concludes that the jurisdiction

conferred on it by the United States declaration does not permit it to entertain these claims. It makes it clear that the effect of the reservation is confined to barring the applicability of these two multilateral treaties as multilateral treaty law, and has no further impact on the sources of international law which Article 38 of the Statute requires the Court to apply, including customary international law.

VI. *Establishment of the facts: evidence and methods employed by the Court* (paras. 57–74)

The Court has had to determine the facts relevant to the dispute. The difficulty of its task derived from the marked disagreement between the Parties, the non-appearance of the Respondent, the secrecy surrounding certain conduct, and the fact that the conflict is continuing. On this last point, the Court takes the view, in accordance with the general principles as to the judicial process, that the facts to be taken into account should be those occurring up to the close of the oral proceedings on the merits of the case (end of September 1985).

With regard to the production of evidence, the Court indicates how the requirements of its Statute—in particular Article 53—and the Rules of Court have to be met in the case, on the basis that the Court has freedom in estimating the value of the various elements of evidence. It has not seen fit to order an enquiry under Article 50 of the Statute. With regard to certain *documentary material* (press articles and various books), the Court has treated these with caution. It regards them not as evidence capable of proving facts, but as material which can nevertheless contribute to corroborating the existence of a fact and be taken into account to show whether certain facts are matters of public knowledge. With regard to *statements by representatives of States,* sometimes at the highest level, the Court takes the view that such statements are of particular probative value when they acknowledge facts or conduct unfavourable to the State represented by the person who made them. With regard to the *evidence of witnesses* presented by Nicaragua—five witnesses gave oral evidence and another a written affidavit—one consequence of the absence of the Respondent was that the evidence of the witnesses was not tested by cross-examination. The Court has not treated as evidence any part of the testimony which was a mere expression of opinion as to the probability or otherwise of the existence of a fact not directly known to the witness. With regard in particular to *affidavits* and sworn *statements* made by members of a government, the Court considers that it can certainly retain such parts of this evidence as may be regarded as contrary to the interests or contentions of the State to which the witness has allegiance; for the rest such evidence has to be treated with great reserve.

The Court is also aware of a publication of the United States State Department entitled *Revolution Beyond Our Borders, Sandinista Intervention in Central America* which was not submitted to the Court in any form or manner contemplated by the Statute and Rules of Court. The Court considers that, in view of the special circumstances of this case, it may, within limits, make use of information in that publication.

VII. *The facts imputable to the United States* (paras. 75–125)

1. The Court examines the allegations of Nicaragua that the *mining of Nicaraguan ports or waters* was carried out by United States military personnel or persons of the nationality of Latin American countries in the pay of the United States. After examining the facts, the Court finds it established that, on a date in

late 1983 or early 1984, the President of the United States authorized a United States Government agency to lay mines in Nicaraguan ports; that in early 1984 mines were laid in or close to the ports of El Bluff, Corinto and Puerto Sandino, either in Nicaraguan internal waters or in its territorial sea or both, by persons in the pay and acting on the instructions of that agency, under the supervision and with the logistic support of United States agents; that neither before the laying of the mines, nor subsequently, did the United States Government issue any public and official warning to international shipping of the existence and location of the mines; and that personal and material injury was caused by the explosion of the mines, which also created risks causing a rise in marine insurance rates.

2. Nicaragua attributes to the direct action of United States personnel, or persons in its pay, operations against *oil installations, a naval base, etc.*, listed in paragraph 81 of the Judgment. The Court finds all these incidents except three, to be established. Although it is not proved that any United States military personnel took a direct part in the operations, United States agents participated in the planning, direction and support. The imputability to the United States of these attacks appears therefore to the Court to be established.

3. Nicaragua complains of *infringement of its airspace* by United States military aircraft. After indicating the evidence available, the Court finds that the only violations of Nicaraguan airspace imputable to the United States on the basis of the evidence are high altitude reconnaissance flights and low altitude flights on 7 to 11 November 1984 causing "sonic booms".

With regard to joint military manoeuvres with Honduras carried out by the United States on Honduran territory near the Honduras/Nicaragua frontier, the Court considers that they may be treated as public knowledge and thus sufficiently established.

4. The Court then examines the genesis, development and *activities of the contra force,* and the *role of the United States* in relation to it. According to Nicaragua, the United States "conceived, created and organized a mercenary army, the *contra* force". On the basis of the available information, the Court is not able to satisfy itself that the Respondent State "created" the *contra* force in Nicaragua, but holds it established that it largely financed and organized the FDN, one element of the force.

It is claimed by Nicaragua that the United States Government devised the strategy and directed the tactics of the *contra* force, and provided direct combat support for its military operations. In the light of the evidence and material available to it, the Court is not satisfied that all the operations launched by the *contra* force, at every stage of the conflict, reflected strategy and tactics wholly devised by the United States. It therefore cannot uphold the contention of Nicaragua at this point. The Court however finds it clear that a number of operations were decided and planned, if not actually by United States advisers, then at least in close collaboration with them, and on the basis of the intelligence and logistic support which the United States was able to offer. It is also established in the Court's view that the support of the United States for the activities of the *contras* took various forms over the years, such as logistic support, the supply of information on the location and movements of the Sandinista troops, the use of sophisticated methods of communication, etc. The evidence does not however warrant a finding that the United States gave direct combat support, if that is taken to mean direct intervention by United States combat forces.

The Court has to determine whether the relationship of the *contras* to the United States Government was such that it would be right to equate the *contras*, for legal purposes, with an organ of the United States Government, or as acting on behalf of that Government. The Court considers that the evidence available to it is insufficient to demonstrate the total dependence of the *contras* on United States aid. A partial dependency, the exact extent of which the Court cannot establish, may be inferred from the fact that the leaders were selected by the United States, and from other factors such as the organization, training and equipping of the force, planning of operations, the choosing of targets and the operational support provided. There is no clear evidence that the United States actually exercised such a degree of control as to justify treating the *contras* as acting on its behalf.

5. Having reached the above conclusion, the Court takes the view that the *contras* remain responsible for their acts, in particular the alleged violations by them of *humanitarian law*. For the United States to be legally responsible, it would have to be proved that that State had effective control of the operations in the course of which the alleged violations were committed.

6. Nicaragua has complained of certain *measures of an economic nature* taken against it by the Government of the United States, which it regards as an indirect form of intervention in its internal affairs. Economic aid was suspended in January 1981; and terminated in April 1981, the United States acted to oppose or block loans to Nicaragua by international financial bodies; the sugar import quota from Nicaragua was reduced by 90 per cent in September 1983; and a total trade embargo on Nicaragua was declared by an executive order of the President of the United States on 1 May 1985.

VIII. *The conduct of Nicaragua* (paras. 126–171)

The Court has to ascertain, so far as possible, whether the activities of the United States complained of, claimed to have been the exercise of collective self-defence, may be justified by certain facts attributable to Nicaragua.

1. The United States has contended that Nicaragua was *actively supporting armed groups operating in certain of the neighbouring countries*, particularly in El Salvador, and specifically in the form of the *supply of arms*, an accusation which Nicaragua has repudiated. The Court first examined the activity of Nicaragua with regard to El Salvador.

Having examined various evidence, and taking account of a number of concordant indications, many of which were provided by Nicaragua itself, from which the Court can reasonably infer the provision of a certain amount of aid from Nicaraguan territory, the Court concludes that support for the armed opposition in El Salvador from Nicaraguan territory was a fact up to the early months of 1981. Subsequently, evidence of military aid from or through Nicaragua remains very weak, despite the deployment by the United States in the region of extensive technical monitoring resources. The Court cannot however conclude that no cross-border transport of or traffic in arms existed. It merely takes note that the allegations of arms traffic are not solidly established, and has not been able to satisfy itself that any continuing flow on a significant scale took place after the early months of 1981.

Even supposing it were established that military aid was reaching the armed opposition in El Salvador from the territory of Nicaragua, it still remains to be proved that such aid is imputable to the authorities of Nicaragua, which has not

sought to conceal the possibility of weapons crossing its territory, but denies that this is the result of any deliberate official policy on its part. Having regard to the circumstances characterizing this part of Central America, the Court considers that it is scarcely possible for Nicaragua's responsibility for arms traffic on its territory to be automatically assumed. The Court considers it more consistent with the probabilities to recognize that an activity of that nature, if on a limited scale, may very well be pursued unknown to the territorial government. In any event the evidence is insufficient to satisfy the Court that the Government of Nicaragua was responsible for any flow of arms at either period.

2. The United States has also accused Nicaragua of being responsible for *cross-border military attacks* on Honduras and Costa Rica. While not as fully informed on the question as it would wish to be, the Court considers as established the fact that certain transborder military incursions are imputable to the Government of Nicaragua.

3. The Judgment recalls certain events which occurred at the time of the fall of President Somoza, since reliance has been placed on them by the United States to contend that the present Government of Nicaragua is in violation of certain alleged *assurances* given by its immediate predecessor. The Judgment refers in particular to the "Plan to secure peace" sent on 12 July 1979 by the "Junta of the Government of National Reconstruction" of Nicaragua to the Secretary-General of the OAS, mentioning, *inter alia*, its "firm intention to establish full observance of human rights in our country" and "to call the first free elections our country has known in this century". The United States considers that it has a special responsibility regarding the implementation of these commitments.

IX. *The applicable law; customary international law* (paras. 172–182)

The Court has reached the conclusion (section V, *in fine*) that it has to apply the multilateral treaty reservation in the United States declaration, the consequential exclusion of multilateral treaties being without prejudice either to other treaties or other sources of law enumerated in Article 38 of the Statute. In order to determine the law actually to be applied to the dispute, it has to ascertain the consequences of the exclusion of the applicability of the multilateral treaties for the definition of the content of the customary international law which remains applicable.

The Court, which has already commented briefly on this subject in the jurisdiction phase,[217] develops its initial remarks. It does not consider that it can be claimed, as the United States does, that all the customary rules which may be invoked have a content exactly identical to that of the rules contained in the treaties which cannot be applied by virtue of the United States reservation. Even if a treaty norm and customary norm relevant to the present dispute were to have exactly the same content, this would not be a reason for the Court to take the view that the operation of the treaty process must necessarily deprive the customary norm of its separate applicability. Consequently, the Court is in no way bound to uphold customary rules only in so far as they differ from the treaty rules which it is prevented by the United States reservation from applying.

In response to an argument of the United States, the Court considers that the divergence between the content of the customary norms and that of the treaty law norms is not such that a judgment confined to the field of customary international law would not be susceptible of compliance or execution by the Parties.

X. *The content of the applicable law* (paras. 183–225)

1. *Introduction: general observations* (paras. 183–186)

The Court has next to consider what are the rules of customary law applicable to the present dispute. For this purpose it has to consider whether a customary rule exists in the *opinio juris* of States, and satisfy that it is confirmed by practice.

2. *The prohibition of the use of force, and the right of self-defence* (paras. 187–201)

The Court finds that both Parties take the view that the principles as to the use of force incorporated in the United Nations Charter correspond, in essentials, to those found in customary international law. They therefore accept a treaty-law obligation to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations (Art 2, para. 4, of the Charter). The Court has however to be satisfied that there exists in customary law an *opinio juris* as to the binding character of such abstention. It considers that this *opinio juris* may be deduced from, *inter alia,* the attitude of the Parties and of States towards certain General Assembly resolutions, and particularly resolution 2625 (XXV) entitled "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations". Consent to such resolutions is one of the forms of expression of an *opinio juris* with regard to the principle of non-use of force, regarded as a principle of customary international law, independently of the provisions, especially those of an institutional kind, to which it is subject on the treaty-law plane of the Charter.

The general rule prohibiting force established in customary law allows for certain exceptions. The exception of the right of individual or collective self-defence is also, in the view of States, established in customary law, as is apparent for example from the terms of Article 51 of the United Nations Charter, which refers to an "inherent right", and from the declaration in resolution 2625 (XXV). The Parties, who consider the existence of this right to be established as a matter for customary international law, agree in holding that whether the response to an attack is lawful depends on the observance of the criteria of the necessity and the proportionality of the measures taken in self-defence.

Whether self-defence be individual or collective, it can only be exercised in response to an "armed attack". In the view of the Court, this is to be understood as meaning not merely action by regular armed forces across an international border, but also the sending by a State of armed bands on to the territory of another State, if such an operation, because of its scale and effects, would have been classified as an armed attack had it been carried out by regular armed forces. The Court quotes the definition of aggression annexed to General Assembly resolution 3314 (XXIX) as expressing customary law in this respect.

The Court does not believe that the concept of "armed attack" includes assistance to rebels in the form of the provision of weapons or logistical or other support. Furthermore, the Court finds that in customary international law, whether of a general kind or that particular to the inter-American legal system, there is no rule permitting the exercise of collective self-defence in the absence of a request by the State which is a victim of the alleged attack, this being

additional to the requirement that the State in question should have declared itself to have been attacked.

3. *The principle of non-intervention* (paras. 202–209)

The principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference. Expressions of an *opinio juris* of States regarding the existence of this principle are numerous. The Court notes that this principle, stated in its own jurisprudence, has been reflected in numerous declarations and resolutions adopted by international organizations and conferences in which the United States and Nicaragua have participated. The text thereof testifies to the acceptance by the United States and Nicaragua of a customary principle which has universal application. As to the content of the principle in customary law, the Court defines the constitutive elements which appear relevant in this case: a prohibited intervention must be one bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely (for example the choice of a political, economic, social and cultural system, and formulation of foreign policy). Intervention is wrongful when it uses, in regard to such choices, methods of coercion, particularly force, either in the direct form of military action or in the indirect form of support for subversive activities in another State.

With regard to the practice of States, the Court notes that there have been in recent years a number of instances of foreign intervention in one State for the benefit of forces opposed to the government of that State. It concludes that the practice of States does not justify the view that any general right of intervention in support of an opposition within another State exists in contemporary international law; and this is in fact not asserted either by the United States or by Nicaragua.

4. *Collective counter-measures in response to conduct not amounting to armed attack* (paras. 210 and 211)

The Court then considers the question whether, if one State acts towards another in breach of the principle of non-intervention, a third State may lawfully take action by way of counter-measures which would amount to an intervention in the first State's internal affairs. This would be analogous to the right of self-defence in the case of armed attack, but the act giving rise to the reaction would be less grave, not amounting to armed attack. In the view of the Court, under international law in force today, States do not have a right of "collective" armed response to acts which do not constitute an "armed attack".

5. *State sovereignty* (paras. 212–214)

Turning to the principle of respect for State sovereignty, the Court recalls that the concept of sovereignty, both in treaty-law and in customary international law, extends to the internal waters and territorial sea of every State and to the airspace above its territory. It notes that the laying of mines necessarily affects the sovereignty of the coastal State, and that if the right of access to ports is hindered by the laying of mines by another State, what is infringed is the freedom of communications and of maritime commerce.

6. *Humanitarian law* (paras. 215–220)

The Court observes that the laying of mines in the waters of another State without any warning or notification is not only an unlawful act but also a breach of the principles of humanitarian law underlying the Hague Convention No. VIII

of 1907. This consideration leads the Court on to examination of the international humanitarian law applicable to the dispute. Nicaragua has not expressly invoked the provisions of international humanitarian law as such, but has complained of acts committed on its territory which would appear to be breaches thereof. In its submissions it has accused the United States of having killed, wounded and kidnapped citizens of Nicaragua. Since the evidence available is insufficient for the purpose of attributing to the United States the acts committed by the *contras,* the Court rejects this submission.

The question however remains of the law applicable to the acts of the United States in relation to the activities of the *contras.* Although Nicaragua has refrained from referring to the four Geneva Conventions of 12 August 1949, to which Nicaragua and the United States are parties, the Court considers that the rules stated in Article 3 which is common to the four Conventions, applying to armed conflicts of a non-international character, should be applied. The United States is under an obligation to "respect" the Conventions and even to "ensure respect" for them, and thus not to encourage persons or groups engaged in the conflict in Nicaragua to act in violation of the provisions of Article 3. This obligation derives from the general principles of humanitarian law to which the Conventions merely give specific expression.

7. *The 1956 treaty* (paras. 221–225)

In its Judgment of 26 November 1984, the Court concluded that it had jurisdiction to entertain claims concerning the existence of a dispute between the United States and Nicaragua as to the interpretation or application of a number of articles of the Treaty of Friendship, Commerce and Navigation signed at Managua on 21 January 1956. It has to determine the meaning of the various relevant provisions, and in particular of Article XXI, paragraphs 1 (*c*) and 1 (*d*), by which the Parties reserved the power to derogate from the other provisions.

XI. *Application of the law to the facts* (paras. 226–282)

Having set out the facts of the case and the rules of international law which appear to be in issue as a result of those facts, the Court has now to appraise the facts in relation to the legal rules applicable, and determine whether there are present any circumstances excluding the unlawfulness of particular acts.

1. *The prohibition of the use of force and the right of self-defence* (paras. 227–238)

Appraising the facts first in the light of the principle of the non-use of force, the Court considers that the laying of mines in early 1984 and certain attacks on Nicaraguan ports, oil installations and naval bases, imputable to the United States, constitute infringements of this principle, unless justified by circumstances which exclude their unlawfulness. It also considers that the United States has committed a prima facie violation of the principle by arming and training the *contras,* unless this can be justified as an exercise of the right of self-defence.

On the other hand, it does not consider that military manoeuvres held by the United States near the Nicaraguan borders, or the supply of funds to the *contras,* amounts to a use of force.

The Court has to consider whether the acts which it regards as breaches of the principle may be justified by the exercise of the right of collective self-defence, and has therefore to establish whether the circumstances required are present. For this, it would first have to find that Nicaragua engaged in an armed

attack against El Salvador, Honduras or Costa Rica, since only such an attack could justify reliance on the right of self-defence. As regards El Salvador, the Court considers that in customary international law the provision of arms to the opposition in another State does not constitute an armed attack on that State. As regards Honduras and Costa Rica, the Court states that, in the absence of sufficient information as to the transborder incursions into the territory of those two States from Nicaragua, it is difficult to decide whether they amount, singly or collectively, to an armed attack by Nicaragua. The Court finds that neither these incursions nor the alleged supply of arms may be relied on as justifying the exercise of the right of collective self-defence.

Secondly, in order to determine whether the United States was justified in exercising self-defence, the Court has to ascertain whether the circumstances required for the exercise of this right of collective self-defence were present, and therefore considers whether the States in question believed that they were the victims of an armed attack by Nicaragua, and requested the assistance of the United States in the exercise of collective self-defence. The Court has seen no evidence that the conduct of those States was consistent with such a situation.

Finally, appraising the United States activity in relation to the criteria of necessity and proportionality, the Court cannot find that the activities in question were undertaken in the light of necessity, and finds that some of them cannot be regarded as satisfying the criterion of proportionality.

Since the plea of collective self-defence advanced by the United States cannot be upheld, it follows that the United States has violated the principle prohibiting recourse to the threat or use of force by the acts referred to in the first paragraph of this section.

2. *The principle of non-intervention* (paras. 239–245)

The Court finds it clearly established that the United States intended, by its support of the *contras,* to coerce Nicaragua in respect of matters in which each State is permitted to decide freely, and that the intention of the *contras* themselves was to overthrow the present Government of Nicaragua. It considers that if one State, with a view to the coercion of another State, supports and assists armed bands in that State whose purpose is to overthrow its government, that amounts to an intervention in its internal affairs, whatever the political objective of the State giving support. It therefore finds that the support given by the United States to the military and paramilitary activities of the *contras* in Nicaragua, by financial support, training, supply of weapons, intelligence and logistic support, constitutes a clear breach of the principle of non-intervention. Humanitarian aid on the other hand cannot be regarded as unlawful intervention. With effect from 1 October 1984, the United States Congress has restricted the use of funds to "humanitarian assistance" to the *contras.* The Court recalls that if the provision of "humanitarian assistance" is to escape condemnation as an intervention in the internal affairs of another State, it must be limited to the purposes hallowed in the practice of the Red Cross, and above all be given without discrimination.

With regard to the form of indirect intervention which Nicaragua sees in the taking of certain action of an economic nature against it by the United States, the Court is unable to regard such action in the present case as a breach of the customary law principle of non-intervention.

3. *Collective counter-measures in response to conduct not amounting to armed attack* (paras. 246–249)

Having found that intervention in the internal affairs of another State does not produce an entitlement to take collective counter-measures involving the use of force, the Court finds that the acts of which Nicaragua is accused, even assuming them to have been established and imputable to that State, could not justify counter-measures taken by a third State, the United States, and particularly could not justify intervention involving the use of force.

4. *State sovereignty* (paras. 250–253)

The Court finds that the assistance to the *contras,* the direct attacks on Nicaraguan ports, oil installations, etc., the mining operations in Nicaraguan ports, and the acts of intervention involving the use of force referred to in the Judgment, which are already a breach of the principle of non-use of force, are also an infringement of the principle of respect for territorial sovereignty. This principle is also directly infringed by the unauthorized overflight of Nicaraguan territory. These acts cannot be justified by the activities in El Salvador attributed to Nicaragua; assuming that such activities did in fact occur, they do not bring into effect any right belonging to the United States. The Court also concludes that, in the context of the present proceedings, the laying of mines in or near Nicaraguan ports constitutes an infringement, to Nicaragua's detriment, of the freedom of communications and of maritime commerce.

5. *Humanitarian law* (paras. 254–256)

The Court has found the United States responsible for the failure to give notice of the mining of Nicaraguan ports.

It has also found that, under general principles of humanitarian law, the United States was bound to refrain from encouragement of persons or groups engaged in the conflict in Nicaragua to commit violations of common Article 3 of the four Geneva Conventions of 12 August 1949. The manual of *Psychological Operations in Guerrilla Warfare,* for the publication and dissemination of which the United States is responsible, advises certain acts which cannot but be regarded as contrary to that article.

6. *Other grounds mentioned in justification of the acts of the United States* (paras. 257–269)

The United States has linked its support to the *contras* with alleged breaches by the Government of Nicaragua of certain solemn commitments to the Nicaraguan people, the United States and the OAS. The Court considers whether there is anything in the conduct of Nicaragua which might legally warrant counter-measures by the United States in response to the alleged violations. With reference to the "Plan to secure peace" put forward by the Junta of the Government of National Reconstruction (12 July 1979), the Court is unable to find anything in the documents and communications transmitting the plan from which it can be inferred that any legal undertaking was intended to exist. The Court cannot contemplate the creation of a new rule opening up a right of intervention by one State against another on the ground that the latter has opted for some particular ideology or political system. Furthermore the Respondent has not advanced a legal argument based on an alleged new principle of "ideological intervention".

With regard more specifically to alleged violations of human rights relied on by the United States, the Court considers that the use of force by the United States could not be the appropriate method to monitor or ensure respect for such rights, normally provided for in the applicable conventions. With regard to the alleged militarization of Nicaragua, also referred to by the United States to justify its activities, the Court observes that in international law there are no rules, other than such rules as may be accepted by the State concerned, by treaty or otherwise, whereby the level of armaments of a sovereign State can be limited, and this principle is valid for all States without exception.

7. *The 1956 Treaty* (paras. 270–282)

The Court turns to the claims of Nicaragua based on the Treaty of Friendship, Commerce and Navigation of 1956, and the claim that the United States has deprived the Treaty of its object and purpose and emptied it of real content. The Court cannot however entertain these claims unless the conduct complained of is not "measures ... necessary to protect the essential security interests" of the United States, since Article XXI of the Treaty provides that the Treaty shall not preclude the application of such measures. With regard to the question what activities of the United States might have been such as to deprive the Treaty of its object and purpose, the Court makes a distinction. It is unable to regard all the acts complained of in that light, but considers that there are certain activities which undermine the whole spirit of the agreement. These are the mining of Nicaraguan ports, the direct attacks on ports, oil installations, etc., and the general trade embargo.

The Court also upholds the contention that the mining of the ports is in manifest contradiction with the freedom of navigation and commerce guaranteed by Article XIX of the Treaty. It also concludes that the trade embargo proclaimed on 1 May 1985 is contrary to that article.

The Court therefore finds that the United States is prima facie in breach of an obligation not to deprive the 1956 Treaty of its object and purpose (*pacta sunt servanda*), and has committed acts in contradiction with the terms of the Treaty. The Court has however to consider whether the exception in Article XXI concerning "measures ... necessary to protect the essential security interests" of a party may be invoked to justify the acts complained of. After examining the available material, particularly the Executive Order of President Reagan of 1 May 1985, the Court finds that the mining of Nicaraguan ports, and the direct attacks on ports and oil installations, and the general trade embargo of 1 May 1985, cannot be justified and necessary to protect the essential security interests of the United States.

XII. *The claim for reparation* (paras. 283–285)

The Court is requested to adjudge and declare that compensation is due to Nicaragua, the quantum thereof to be fixed subsequently, and to award to Nicaragua the sum of 370.2 million United States dollars as an interim award. After satisfying itself that it has jurisdiction to order reparation, the Court considers appropriate the request of Nicaragua for the nature and amount of the reparation to be determined in a subsequent phase of the proceedings. It also considers that there is no provision in the Statute of the Court either specifically empowering it or debarring it from making an interim award of the kind requested. In a case in which one party is not appearing, the Court should refrain

from any unnecessary act which might prove an obstacle to a negotiated settlement. The Court therefore does not consider that it can accede *at this stage* to this request by Nicaragua.

XIII. *The provisional measures* (paras. 286–289)

After recalling certain passages in its Order of 10 May 1984, the Court concludes that it is incumbent on each Part not to direct its conduct solely by reference to what it believes to be its rights. Particularly is this so in a situation of armed conflict where no reparation can efface the results of conduct which the Court may rule to have been contrary to international law.

XIV. *Peaceful settlement of disputes; the Contadora process* (paras. 290 and 291)

In the present case the Court has already taken note of the Contadora process, and of the fact that it had been endorsed by the United Nations Security Council and General Assembly, as well as by Nicaragua and the United States. It recalls to both Parties to the present case the need to co-operate with the Contadora efforts in seeking a definitive and lasting peace in Central America, in accordance with the principle of customary international law that prescribes the peaceful settlement of international disputes, also endorsed by Article 33 of the United Nations Charter.

Operative clause (para. 292)

"THE COURT,

"(1) By eleven votes to four,

"*Decides*, that in adjudicating the dispute brought before it by the Application filed by the Republic of Nicaragua on 9 April 1984, the Court is required to apply the 'multilateral treaty reservation' contained in proviso (*c*) to the declaration of acceptance of jurisdiction made under Article 36, paragraph 2, of the Statute of the Court by the Government of the United States of America deposited on 26 August 1946;

"IN FAVOUR: *President* Nagendra Singh; *Vice-President* de Lacharrière; *Judges* Lachs, Oda, Ago, Schwebel, Sir Robert Jennings, Mbaye, Bedjaoui and Evensen; *Judge* ad hoc Colliard;

"AGAINST: *Judges* Ruda, Elias, Sette-Camara and Ni.

"(2) By twelve votes to three,

"*Rejects* the jurisdiction of collective self-defence maintained by the United States of America in connection with the military and paramilitary activities in and against Nicaragua the subject of this case;

"IN FAVOUR: *President* Nagendra Singh; *Vice-President* de Lacharrière; *Judges* Lachs, Ruda, Elias, Ago, Sette-Camara, Mbaye, Bedjaoui, Ni and Evensen; *Judge ad hoc* Colliard;

"AGAINST: *Judges* Oda, Schwebel and Sir Robert Jennings.

"(3) By twelve votes to three,

"*Decides* that the United States of America, by training, arming, equipping, financing and supplying the *contra* forces or otherwise encouraging, supporting and aiding military and paramilitary activities in and against Nicaragua, has acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to intervene in the affairs of another State;

"IN FAVOUR: *President* Nagendra Singh; *Vice-President* de Lacharrière; *Judges* Lachs, Ruda, Elias, Ago, Sette-Camara, Mbaye, Bedjaoui, Ni and Evensen; *Judge ad hoc* Colliard;

"AGAINST: *Judges* Oda, Schwebel and Sir Robert Jennings.

"(4) By twelve votes to three,

"*Decides* that the United States of America, by certain attacks on Nicaraguan territory in 1983–1984, namely attacks on Puerto Sandino on 13 September and 14 October 1983; an attack on Corinto on 10 October 1983; an attack on Potosi Naval Base on 4/5 January 1984; an attack on San Juan del Sur on 7 March 1984; attacks on patrol boats at Puerto Sandino on 28 and 30 March 1984; and an attack on San Juan del Norte on 9 April 1984; and further by those acts of intervention referred to in subparagraph (3) hereof which involve the use of force, has acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to use force against another State;

"IN FAVOUR: *President* Nagendra Singh; *Vice-President* de Lacharrière; *Judges* Lachs, Ruda, Elias, Ago, Sette-Camara, Mbaye, Bedjaoui, Ni and Evensen; *Judge ad hoc* Colliard;

"AGAINST: *Judges* Oda, Schwebel and Sir Robert Jennings.

"(5) By twelve votes to three,

"*Decides* that the United States of America, by directing or authorizing overflights of Nicaraguan territory, and by the acts imputable to the United States referred to in subparagraph (4) hereof, has acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to violate the sovereignty of another State;

"IN FAVOUR: *President* Nagendra Singh; *Vice-President* de Lacharrière; *Judges* Lachs, Ruda, Elias, Ago, Sette-Camara, Mbaye, Bedjaoui, Ni and Evensen; *Judge ad hoc* Colliard;

"AGAINST: *Judges* Oda, Schwebel and Sir Robert Jennings.

(6) By twelve votes to three,

"*Decides* that, by laying mines in the internal or territorial waters of the Republic of Nicaragua during the first months of 1984, the United States of America has acted, against the Republic of Nicaragua, in breach of its obligations under customary international law not to use force against another State, not to intervene in its affairs, not to violate its sovereignty and not to interrupt peaceful maritime commerce;

"IN FAVOUR: *President* Nagendra Singh; *Vice-President* de Lacharrière; *Judges* Lachs, Ruda, Elias, Ago, Sette-Camara, Mbaye, Bedjaoui, Ni and Evensen; *Judge ad hoc* Colliard;

"AGAINST: *Judges* Oda, Schwebel and Sir Robert Jennings.

"(7) By fourteen votes to one,

Decides that, by the acts referred to in subparagraph (6) hereof, the United States of America has acted, against the Republic of Nicaragua, in breach of its obligations under Article XIX of the Treaty of Friendship, Commerce and Navigation between the United States of America and the Republic of Nicaragua signed at Managua on 21 January 1956;

"IN FAVOUR: *President* Nagendra Singh; *Vice-President* de Lacharrière; *Judges* Lachs, Ruda, Elias, Oda, Ago, Sette-Camara, Sir Robert Jennings, Mbaye, Bedjaoui, Ni and Evensen; *Judge ad hoc* Colliard;

"AGAINST: *Judge* Schwebel.

"(8) By fourteen votes to one,

"*Decides* that the United States of America, by failing to make known the existence and location of the mines laid by it, referred to in subparagraph (6) hereof, has acted in breach of its obligations under customary international law in this respect;

"IN FAVOUR: *President* Nagendra Singh; *Vice-President* de Lacharrière; *Judges* Lachs, Ruda, Elias, Ago, Sette-Camara, Schwebel, Sir Robert Jennings, Mbaye, Bedjaoui, Ni and Evensen; *Judge ad hoc* Colliard;

"AGAINST: *Judge* Oda.

"(9) By fourteen votes to one,

"*Finds* that the United States of America, by producing in 1983 a manual entitled 'Operaciones sicológicas en guerra de guerrillas', and disseminating it to *contra* forces, has encouraged the commission by them of acts contrary to general principles of humanitarian law; but does not find a basis for concluding that any such acts which may have been committed are imputable to the United States of America as acts of the United States of America;

"IN FAVOUR: *President* Nagendra Singh; *Vice-President* de Lacharrière; *Judges* Lachs, Ruda, Elias, Ago, Sette-Camara, Schwebel, Sir Robert Jennings, Mbaye, Bedjaoui, Ni and Evensen; *Judge ad hoc* Colliard;

"AGAINST: *Judge* Oda.

"(10) By twelve votes to three,

"*Decides* that the United States of America, by the attacks on Nicaraguan territory referred to in subparagraph (4) hereof, and by declaring a general embargo on trade with Nicaragua on 1 May 1985, has committed acts calculated to deprive of its object and purpose the Treaty of Friendship, Commerce and Navigation between the Parties signed at Managua on 21 January 1956;

"IN FAVOUR: *President* Nagendra Singh; *Vice-President* de Lacharrière; *Judges* Lachs, Ruda, Elias, Ago, Sette-Camara, Mbaye, Bedjaoui, Ni and Evensen; *Judge ad hoc* Colliard;

"AGAINST: *Judges* Oda, Schwebel and Sir Robert Jennings.

"(11) By twelve votes to three,

"*Decides* that the United States of America, by the attacks on Nicaraguan territory referred to in subparagraph (4) hereof, and by declaring a general embargo on trade with Nicaragua on 1 May 1985, has acted in breach of its obligations under Article XIX of the Treaty of Friendship, Commerce and Navigation between the Parties signed at Managua on 21 January 1956;

"IN FAVOUR: *President* Nagendra Singh; *Vice-President* de Lacharrière; *Judges* Lachs, Ruda, Elias, Ago, Sette-Camara, Mbaye, Bedjaoui, Ni and Evensen; *Judge ad hoc* Colliard;

"AGAINST: *Judges* Oda, Schwebel and Sir Robert Jennings.

"(12) By twelve votes to three,

"*Decides* that the United States of America is under a duty immediately to cease and to refrain from all such acts as may constitute breaches of the foregoing legal obligations;

"IN FAVOUR: *President* Nagendra Singh; *Vice-President* de Lacharrière; *Judges* Lachs, Ruda, Elias, Ago, Sette-Camara, Mbaye, Bedjaoui, Ni and Evensen; *Judge ad hoc* Colliard;

"AGAINST: *Judges* Oda, Schwebel and Sir Robert Jennings.

"(13) By twelve votes to three,

"*Decides* that the United States of America is under an obligation to make reparation to the Republic of Nicaragua for all injury caused to Nicaragua by the breaches of obligations under customary international law enumerated above;

"IN FAVOUR: *President* Nagendra Singh; *Vice-President* de Lacharrière; *Judges* Lachs, Ruda, Elias, Ago, Sette-Camara, Mbaye, Bedjaoui, Ni and Evensen; *Judge ad hoc* Colliard;

"AGAINST: *Judges* Oda, Schwebel and Sir Robert Jennings.

"(14) By fourteen votes to one,

"*Decides* that the United States of America is under an obligation to make reparation to the Republic of Nicaragua for all injury caused to Nicaragua by the breaches of the Treaty of Friendship, Commerce and Navigation between the Parties signed at Managua on 21 January 1956;

"IN FAVOUR: *President* Nagendra Singh; *Vice-President* de Lacharrière; *Judges* Lachs, Ruda, Elias, Oda, Ago, Sette-Camara, Sir Robert Jennings, Mbaye, Bedjaoui, Ni and Evensen; *Judge ad hoc* Colliard;

"AGAINST: *Judge* Schwebel.

"(15) By fourteen votes to one,

"*Decides* that the form and amount of such reparation, failing agreement between the Parties, will be settled by the Court, and reserves for this purpose the subsequent procedure in this case;

"IN FAVOUR: *President* Nagendra Singh; *Vice-President* de Lacharrière; *Judges* Lachs, Ruda, Elias, Oda, Ago, Sette-Camara, Sir Robert Jennings, Mbaye, Bedjaoui, Ni and Evensen; *Judge ad hoc* Colliard;

"AGAINST: *Judge* Schwebel.

"(16) Unanimously,

Recalls to both Parties their obligation to seek a solution to their disputes by peaceful means in accordance with international law."

*

Judges Nagendra Singh, Lachs, Ruda, Elias, Ago, Sette-Camara and Ni appended separate opinions.[218] Judges Oda, Schwebel and Sir Robert Jennings appended dissenting opinions.[219]

(ii) *Border and Transborder Armed Actions (Nicaragua v. Costa Rica)*[220]

On 28 July 1986 the Republic of Nicaragua had filed in the Registry of the Court an Application instituting proceedings against the Republic of Costa Rica. Nicaragua founded the jurisdiction of the Court on Article XXXI of the Pact of Bogotá and on the declaration whereby Costa Rica accepted the jurisdiction of the Court under the circumstances contemplated in Article 36, paragraph 2, of the Statute of the Court.

In its Application, Nicaragua complained of specific border and transborder armed actions, of increasing frequency and intensity since 1982, organized by *contras* on its territory from Costa Rica. It mentioned various attempts on its part to achieve a peaceful solution, attributing the failure of these to the attitude of the Costa Rican authorities. Subject to any future amendments, it requested the Court to adjudge and declare:

"(*a*) that the acts and omissions of Costa Rica in the material period constitute breaches of the various obligations of customary international law and the treaties specified in the body of this Application for which the Republic of Costa Rica bears legal responsibility;

"(*b*) that Costa Rica is under a duty immediately to cease and to refrain from all such acts as may constitute breaches of the foregoing legal obligations;

"(*c*) that Costa Rica is under an obligation to make reparations to the Republic of Nicaragua for all injury caused to Nicaragua by the breaches of obligations under the pertinent rules of customary international law and treaty provisions."

On 12 August 1986, by a letter from the Minister for Foreign Affairs, the Government of the Republic of Costa Rica informed the Court that it reserved the right in due course to present a counter-claim against Nicaragua, as authorized by Article 80 of the Rules of Court.

By an Order dated 21 October 1986,[221] the Court, taking account of the views of the Parties, fixed time-limits for the written proceedings, namely 21 July 1987 for the Memorial of Nicaragua and 21 April 1988 for the Counter-Memorial of Costa Rica.

(iii) *Border and Transborder Armed Actions (Nicaragua v. Honduras)*[222]

On 28 July 1986 the Republic of Nicaragua had filed in the Registry of the Court an Application instituting proceedings against the Republic of Honduras. Nicaragua founded the jurisdiction of the Court on Article XXXI of the Pact of Bogotá and on the declaration whereby Honduras accepted the jurisdiction of the Court under the circumstances contemplated in Article 36 of the Statute of the Court.

In its Application, Nicaragua not only referred to border and transborder armed actions—of increasing frequency and intensity since 1980 despite its reiterated protests—organized by *contras* on its territory from Honduras, but also, among other matters, alleged that assistance was being given to the *contras* by the armed forces of Honduras, said also directly to participate in military attacks against its territory, and that threats of force against it had been emanating from the Government of Honduras. Subject to any possible alterations, it requested the Court to adjudge and declare:

"(*a*) that the acts and omissions of Honduras in the material period constitute breaches of the various obligations of customary international law and the treaties specified in the body of this Application for which the Republic of Honduras bears legal responsibility;

"(*b*) that Honduras is under a duty immediately to cease and to refrain from all such acts as may constitute breaches of the foregoing legal obligations;

"(*c*) that Honduras is under an obligation to make reparation to the Republic of Nicaragua for all injury caused to Nicaragua by the breaches of obligations under the pertinent rules of customary international law and treaty provisions."

By a letter dated 29 August 1986, the Minister for External Relations of Honduras informed the Court that in his Government's view it had no jurisdiction over the matters raised by the Application, and expressed the hope that the Court would first confine the written proceedings to the issues of jurisdiction and admissibility. It was then agreed between the Parties that the issues of jurisdiction and admissibility should be dealt with at a preliminary stage of the proceedings, and the Court, by an Order of 22 October 1986, fixed time-limits for the filing of pleadings confined to those issues: 23 February 1987 for the Memorial of Honduras, and 22 June 1987 for the Counter-Memorial of Nicaragua.[223]

These pleadings were duly filed.

B. Contentious cases before a Chamber

(i) *Frontier Dispute (Burkina Faso/Mali)*[224]

Following grave incidents which brought the armed forces of Burkina Faso and Mali into conflict in the frontier region at the end of 1985, the two Parties made parallel requests to the Chamber for the indication of provisional measures, the official texts of which reached the Registry on 2 January for Burkina Faso, and on 6 January 1986 for Mali.

The Chamber held a hearing on 9 January 1986 to hear the oral observations of both Parties on the requests for the indication of provisional measures, and on 10 January 1986, at a public sitting, made an Order indicating provisional measures[225] the operative provisions of which are as follows:

"The Chamber,

"Unanimously,

"1. *Indicates,* pending its final decision in the proceedings instituted on 20 October 1983 by the notification of the Special Agreement between the Government of the Republic of Upper Volta (now Burkina Faso) and the Government of the Republic of Mali, signed on 16 September 1983 and relative to the frontier dispute between the two States, the following provisional measures:

"A. The Government of Burkina Faso and the Government of the Republic of Mali should each of them ensure that no action of any kind is taken which might aggravate or extend the dispute submitted to the Chamber or prejudice the right of the other Party to compliance with whatever judgment the Chamber may render in the case;

"B. Both Governments should refrain from any act likely to impede the gathering of evidence material to the present case;

"C. Both Governments should continue to observe the cease-fire instituted by agreement between the two Heads of State on 31 December 1985;

"D. Both Governments should withdraw their armed forces to such positions, or behind such lines, as may, within twenty days of the date of the present Order, be determined by an agreement between those Governments, it being understood that the terms of the troop withdrawal will be laid down by the agreement in question and that, failing such agreement, the Chamber will itself indicate them by means of an Order;

"E. In regard to the administration of the disputed areas, the situation which prevailed before the armed actions that gave rise to the requests for provisional measures should not be modified;

"2. *Calls upon* the Agents of the Parties to notify the Registrar without delay of any agreement concluded between their Governments within the scope of point 1 D above;

"3. *Decides* that, pending its final judgment, and without prejudice to the application of Article 76 of the Rules, the Chamber will remain seized of the questions covered by the present Order."

Pursuant to Article 41, paragraph 2, of the Statute of the Court, the Registrar immediately notified the indication of these measures to the Parties in this case and to the Security Council.

In a letter dated 24 January 1986, and pursuant to Article 2 of the above Order for the indication of provisional measures, the Co-Agent of Mali transmitted to the Registrar the final communiqué of the first extraordinary conference of the Heads of State and Government of the member countries of ANAD (*Accord de non-agression et d'assistance en matière de défense*) disseminated on 18 January 1986. The communiqué reports the agreement reached between the two Heads of State on the withdrawal of their respective armed forces on either side of the disputed area.

Each of the Parties filed a Counter-Memorial within the time-limit fixed by the Order of the President of the Chamber dated 3 October 1985, at 2 April 1986.

After the filing of a Memorial and a Counter-Memorial by each Party and a hearing which took place between 16 and 26 June 1986, the Chamber, on 22 December 1986, delivered its Judgment at a public sitting.[226] An analysis of the Judgment is given below and is followed by the text of the operative clause.

Procedure (paras. 1–15)

The Chamber recapitulates the successive phases of the procedure as from the notification to the Registrar of the Special Agreement concluded on 16 September 1983 between the Republic of Upper Volta (known as Burkina Faso since 4 August 1984) and the Republic of Mali, by which those two states agreed to submit to a chamber of the Court a dispute relating to the delimitation of a part of their common frontier.

The task of the Chamber (paras. 16–18)

The Chamber's task is to indicate the line of the frontier between Burkina Faso and the Republic of Mali in the disputed area which is defined by Article I of the Special Agreement as consisting of "a band of territory extending from the sector Koro (Mali) Djibo (Upper Volta) up to and including the region of the Béli". Both States have indicated, in their submissions to the Chamber, the

frontier line which each of them considers to be well founded in law. These lines are shown on sketch-map No. 1 in the Judgment.

Rules applicable to the case. Source of the rights claimed by the Parties (paras. 19–30)

1. *The principle of the intangibility of frontiers inherited from colonization* (para. 19)

The Judgment considers the question of the rules applicable to the case, and seeks to ascertain the source of the rights claimed by the Parties. It begins by noting that the characteristic feature of the legal context of the frontier determination to be undertaken by the Chamber is that both States involved derive their existence from the process of decolonization which has been unfolding in Africa during the past 30 years: it can be said that Burkina Faso corresponds to the colony of Upper Volta and the Republic of Mali to the colony of Sudan (formerly French Sudan). In the preamble to their Special Agreement, the Parties stated that the settlement of the dispute should be "based in particular on respect for the principle of the intangibility of frontiers inherited from colonization", which recalls the principle expressly stated in resolution AGH/Res.16(I) adopted in Cairo on July 1964 at the first summit conference following the creation of the Organization of African Unity, whereby all member States "solemnly ... pledge themselves to respect the frontiers existing on their achievement of national independence".

2. *The principle of* uti possidetis juris (paras. 20–26)

In these circumstances, the Chamber cannot disregard the principle of *uti possidetis juris,* the application of which gives rise to this respect for intangibility of frontiers. It emphasizes the general scope of the principle in matters of decolonization and its exceptional importance for the African continent, including the two Parties to this case. Although this principle was invoked for the first time in Spanish America, it is not a rule pertaining solely to one specific system of international law. It is a principle of general scope, logically connected with the phenomenon of the obtaining of independence, wherever it occurs. Its obvious purpose is to prevent the independence and stability of new States being endangered by fratricidal struggles provoked by the challenging of frontiers following the withdrawal of the administering power. The fact that the new African States have respected the territorial status quo which existed when they obtained independence must therefore be seen not as a mere practice but as the application in Africa of a rule of general scope which is firmly established in matters of decolonization; and the Chamber does not find it necessary to demonstrate this for the purposes of the case.

The principle of *uti possidetis juris* accords pre-eminence to legal title over effective possession as a basis of sovereignty. Its primary aim is to secure respect for the territorial boundaries which existed at the time when independence was achieved. When those boundaries were no more than delimitations between different administrative divisions or colonies all subject to the same sovereign, the application of this principle resulted in their being transformed into international frontiers, and this is what occurred with the States Parties to the present case, which both took shape within the territories of French West Africa. Where such boundaries already had the status of international frontiers at the time of decolonization, the obligation to respect pre-existing international frontiers derives from a general rule of international law relating to State succession. The

many solemn affirmations of the intangibility of frontiers, made by African statesmen or by organs of the OAU, should therefore be taken as references to a principle already in existence, not as affirmations seeking to consecrate a new principle or to extend to Africa a rule previously applicable only in another continent.

This principle of *uti possidetis* appears to conflict outright with the right of peoples to self-determination. In fact, however, the maintenance of the territorial status quo in Africa is often seen as the wisest course. The essential requirement of stability in order to survive, to develop and gradually to consolidate their independence in all fields, has induced African States to consent to the maintenance of colonial boundaries or frontiers, and to take account of this when interpreting the principle of self-determination of peoples. If the principle of *uti possidetis* has kept its place among the most important legal principles, this is by a deliberate choice on the part of African States.

3. *The role of equity* (paras. 27–28)

The Chamber then considers whether it is possible, in this case, to invoke equity, concerning which the two Parties have advanced conflicting views. Obviously the Chamber cannot decide *ex aequo et bono,* since the Parties have not requested it to do so. It will, however, have regard to equity *infra legem,* that is, that form of equity which constitutes a method of interpretation of the law in force, and which is based on law. How the Chamber will, in practice, approach its consideration of this form of equity will become clear from its application of the principles and rules which it finds to be applicable.

4. *French colonial law (''droit d'outre-mer'')* (paras. 29–30)

The Parties agree that the delimitation of the frontier line also has to be appraised in the light of French ''*droit d'outre-mer*''. The line to be determined by the Chamber as being that which existed in 1959–1960 was originally no more than an administrative boundary dividing two former French overseas territories (''*territoires d'outre-mer*'') and, as such, was necessarily defined at that time not according to international law, but according to the French legislation applicable to such territories. Here the Chamber explains that international law—and therefore the principle of *uti possidetis*—applies to the new State as from its accession to independence, but has no retroactive effect. It freezes the territorial title. International law does not effect any *renvoi* to the law of the colonizing State. If the latter law has any part to play, it is as one factual element among others, or as evidence indicative of the ''colonial heritage'' at the critical date.

The development of administrative organization (paras. 31–33)

The Judgment briefly reviews how territorial administration was organized in French West Africa—to which both Parties previously belonged—with its hierarchy of administrative units (colonies, *cercles,* subdivisions, *cantons,* villages), before recapitulating the history of both the colonies concerned since 1919, in order to determine what, for each of the two Parties, was the colonial heritage to which the *uti possidetis* was to apply. Mali gained its independence in 1960 under the name of the Federation of Mali, succeeding the Sudanese Republic which had emerged, in 1959, from an overseas territory called the French Sudan. The history of Upper Volta is more complicated. It came into being in 1919 but was then abolished in 1932, and again reconstituted by a law of 4 September 1947, which stated that the boundaries of ''the re-established territory

of Upper Volta" were to be "those of the former colony of Upper Volta on 5 September 1932". It was this reconstituted Upper Volta which subsequently obtained independence in 1960 and took the name of Burkina Faso in 1984. In the present case, therefore, the problem is to ascertain what frontier was inherited from the French administration; more precisely, to ascertain what, in the disputed area, was the frontier which existed in 1959–1960 between the *territoires d'outre-mer* of Sudan and Upper Volta. The Parties both agree that when they became independent there was a definite frontier, and they accept that no modification took place in the disputed area between January 1959 and August 1960, or has taken place since.

The dispute between the Parties and the preliminary question of possible acquiescence by Mali (paras. 34–43)

Burkina Faso argues that Mali accepted as binding the solution to the dispute outlined by the OAU Mediation Commission, which sat in 1975. If this argument from acquiescence were well founded, it would make it unnecessary to endeavour to establish the frontier inherited from the colonial period.

The Chamber therefore considers whether Mali did acquiesce, as Burkina Faso claims, in the solution outlined by the Commission, although the latter never in fact completed its work. It begins by considering the element of acquiescence which, according to Burkina Faso, is found in the declaration made by the Head of State of Mali on 11 April 1975, whereby Mali allegedly declared itself bound in advance by the report to be drawn up by the Mediation Commission on the basis of the specific proposals emanating from its Legal Sub-Commission. That report was never issued, but it is known what the proposals of the Sub-Commission were. Upon consideration, and taking account of the jurisprudence of the Court, the Chamber finds that there are no grounds to interpret the declaration in question as a unilateral act with legal implications in regard to the dispute. The Judgment then goes on to consider the principles of delimitation approved by the Legal Sub-Commission which, according to Burkina Faso, Mali agreed should be taken into consideration in delimiting the frontier in the disputed area. Having weighed the arguments of the Parties, the Chamber concludes that, since it has to determine the frontier line on the basis of international law, it is of little significance whether Mali's approach may be construed to reflect a specific position towards, or indeed to signify acquiescence in, the principles held by the Legal Sub-Commission to be applicable to the resolution of the dispute. If those principles are applicable as elements of law, they remain so whatever Mali's attitude. The situation would only be otherwise if the two Parties had asked the Chamber to take account of them or had given them a special place in the Special Agreement as "rules expressly recognized by the contesting States" (Art. 38, para. 1 (*a*) of the Statute), neither of which was the case.

Preliminary question: the fixing of the tripoint (paras. 44–50)

The Chamber disposes of a further preliminary question, concerning its powers in the matter of fixing the tripoint which forms the easternmost point of the frontier between the Parties. Their views on this question conflict. Mali claims that the determination of the tripoint Niger-Mali-Burkina Faso cannot be effected by the two Parties without Niger's agreement, and cannot be determined by the Chamber either; and Burkina Faso considers that the Chamber must, pursuant to the Special Agreement, reach a decision on the position of the

tripoint. As for its jurisdiction in this matter, the Chamber finds it to be clear from the wording of the Special Agreement that the common intention of the Parties was that it should indicate the frontier line throughout the whole of the disputed area. In addition, it considers that its jurisdiction is not restricted simply because the end-point of the frontier lies on the frontier of a third State not a party to the proceedings. The rights of the neighbouring State, Niger, are in any event safeguarded by the operation of Article 59 of the Statute of the Court. Regarding the question whether considerations relating to the need to safeguard the interests of the third State concerned would require the Chamber to refrain from exercising its jurisdiction to determine the whole course of the line, this presupposes, according to the Chamber, that the legal interests of that State would not only be affected by its decision, but would form the very subject-matter of that decision. This is not so in this case, and the Chamber is accordingly required to determine how far the frontier inherited from the colonizing State extends. This is, for the Chamber, not a matter so much of defining a tripoint as of indicating where the easternmost point of the frontier lies, the point where the frontier ceases to divide the territories of Burkina Faso and the Republic of Mali.

Evidence relied on by the Parties (paras. 51–65)

The Parties have relied upon different types of evidence to give support to their arguments.

1. They have referred to *legislative and regulative texts* or *administrative documents,* of which the basic document is the French law of 4 September 1947 "for the re-establishment of the territory of Upper Volta", providing that the boundaries of the re-established territory were to be "those of the former colony of Upper Volta on 5 September 1932". At the time of independence in 1960, those boundaries were the same as those which had existed on 5 September 1932. However, the texts and documents produced in evidence contain no complete description of the course of the boundary between French Sudan and Upper Volta during the two periods when these colonies co-existed (1919–1932 and 1947–1960). They are limited in scope, and their legal force or the correct interpretation of them are matters of dispute between the Parties.

2. The two states have also produced an abundant and varied *collection of cartographic materials,* and have discussed in considerable detail the question of the probative force of the maps and the respective legal force of the various kinds of evidence. The Chamber notes that, in frontier delimitations, maps merely constitute information, and never constitute territorial titles *in themselves alone.* They are merely extrinsic evidence which may be used, along with other evidence, to establish the real facts. Their value depends on their technical reliability and their neutrality in relation to the dispute and the Parties to that dispute; they cannot effect any reversal of the onus of proof.

When considering the maps produced in this case, the Chamber notes that not one of the maps available to it can provide a direct official illustration of the words contained in four essential texts even though it was clear from their wording that two of those texts were intended to be accompanied by maps. Although the Chamber has been presented with a considerable body of maps, sketches and drawings for a region that is nevertheless described as partly unknown, no indisputable frontier line can be discerned from these documents. Particular vigilance is therefore required in examining the file of maps.

Two of the maps produced appear to be of special significance. These are the 1:500,000 scale map of the colonies of French West Africa, 1925 edition, known as the Blondel la Rougery map, and the 1:200,000 scale map of West Africa, issued by the French Institut géographique national (IGN) and originally published between 1958 and 1960. With regard to the first of these maps, the Chamber considers that the administrative boundaries shown on it do not in themselves possess any particular authority. With regard to the second map, the Chamber finds that, since it was drawn up by a body which was neutral towards the Parties, although it does not possess the status of a legal title, it is a visual portrayal both of the available texts and of information obtained on the ground. Where other evidence is lacking or is not sufficient to show an exact line, the probative force of the IGN map must be viewed as compelling.

3. Among the evidence to be taken into consideration, the Parties invoke the "colonial *effectivités*", in other words, the conduct of the administrative authorities as proof of the effective exercise of territorial jurisdiction in the region during the colonial period. The role played by such *effectivités* is complex, and the Chamber has to make a careful evaluation of their legal force in each particular instance.

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The Chamber emphasizes that the present case is a decidely unusual one as concerns the facts to be proven or the evidence to be produced. Although the Parties have provided as complete a case file as possible the Chamber cannot be certain of deciding the case on the basis of full knowledge of the facts. The case file shows inconsistencies and shortcomings. The systematic application of the rule concerning the burden of proof cannot always provide a solution, and the rejection of any particular argument for lack of proof is not sufficient to warrant upholding the contrary argument.

Legislative and regulative titles and administrative documents invoked by the Parties: their applicability to the determination of the frontier line (paras. 66–105) *and the question of their implementation* (paras. 106–111)

The Chamber deals first with the legislative and regulative titles and the administrative documents invoked by the Parties, and considers what weight to attach to each of them, for the purpose of indicating the course of the line in the sector to which they relate. The Judgment presents these texts in chronological order:

—*Order of 31 December 1922* for the reorganization of the Timbuktu region. The Parties agree in recognizing the validity and pertinence of this text.

—*Order dated 31 August 1927,* issued by the Governor-General *ad interim* of French West Africa, relating to the boundaries of the colonies of Niger and Upper Volta; this Order was amended by an *erratum dated 5 October 1927.* The Parties both treat this text as relevant in so far as it refers to the tripoint discussed above. They disagree, however, regarding its validity; Mali claims that the Order and the erratum are invalidated by a factual error relating to the location of the heights of N'Gouma, so that Burkina Faso may not properly rely upon them. The Chamber emphasizes that, in the present proceedings, the Order and erratum have only evidentiary value in respect of the location of the end-point of the

boundary between French Sudan and Upper Volta. The Chamber considers it unnecessary to endeavour to determine the legal validity of the text, its value as evidence—which is accepted by Mali—being a separate question.

—*Decree of 5 September 1932,* abolishing the colony of Upper Volta and annexing its component *cercles* either to French Sudan or to Niger (cf. sketch-map No. 2 in the Judgment).

—*Exchange of letters which took place in 1935:* this correspondence consists of *letter 191 CM2 of 19 February 1935* addressed to the Lieutenant-Governors of Niger and French Sudan by the Governor-General of French West Africa, and the reply from the Lieutenant-Governor of the French Sudan dated *3 June 1935.* The Governor-General suggested a description of the boundary between Niger and the French Sudan, to which the Lieutenant-Governor of the Sudan replied by proposing only one amendment. This description appears to correspond to the line shown on the Blondel la Rougery map (see sketch-map No. 3 in the Judgment). The draft description was not followed up, but its interpretation is a matter of dispute between the Parties, the issue being whether the proposed description did no more than describe an existing boundary (the "declaratory" theory of Burkina Faso) or whether the letter reflected an intention to define the legal boundary *de novo* (the "modifying" theory argued by Mali). The Chamber concludes that the definition of the boundary given in letter 191 CM2 corresponded, in the minds both of the Governor-General and of all the administrators who were consulted, to the *de facto* situation.

—*Order No. 2728 AP* issued on *27 November 1935* by the Governor-General *ad interim* of French West Africa for the delimitation of the *cercles* of Bafoulabé, Bamako and Mopti (French Sudan). The last-named *cercle* bordered on the *cercle* of Ouahigouya, which was then a part of French Sudan and which reverted to Upper Volta as from 1947. This boundary was again to form the boundary between the territories of Upper Volta and Sudan until independence—hence its significance. The text describes the eastern bounary of the Sudanese *cercle* of Mopti as being "a line running markedly north-east, leaving to the *cercle* of Mopti the villages of Yoro, Dioulouna, Oukoulou, Agoulourou, Koubo ...". The Parties do not agree on the legal significance to be ascribed to this provision. They disagree as to whether the line indicated in the text, which "leaves" the villages in question to the *cercle* of Mopti, had the effect of attributing to that *cercle* villages which had previously been part of another *cercle* (Burkina Faso's contention) or whether this definition of the line rather implied that these villages already belonged to the *cercle* of Mopti (Mali's contention). The Chamber considers whether the actual text of Order 2728 AP, and the administrative context in which it was issued, provide any indication of the scope which the Governor-General *ad interim* intended it to have. It concludes that there is at least a presumption that Order 2728 AP had neither the aim nor the result of modifying the boundaries which existed in 1935 between the Sudanese *cercles* of Mopti and Ouahigouya (no modification having been made between 1932 and 1935). The Chamber then enquires whether the con-

tent of Order 2728 AP operates to reverse or to confirm this presumption. It concludes from a detailed study of the documentary and cartographic evidence from which these villages can be located that this material does not overturn the presumption that Order 2728 AP was declaratory in nature.

In the course of its demonstration, the Chamber explains that the part of the frontier whose determination calls for the scope of Order 2728 AP to be ascertained has been called in the Judgment "the sector of the four villages". The words "four villages" refer to the villages of Dioulouna (which can be identified as the village which now goes under the name of Dionouga), Oukoulou, Agoulourou and Koubo (the village of Yoro, also mentioned in the Judgment, was definitely part of the *cercle* of Mopti, and is not in issue).

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The Chamber considers what relationship can be established among the pieces of information provided by the various texts of which it has to make use, and reaches a number of conclusions. It notes that on certain points the sources agree and bear one another out, but that in some respects, in view of the shortcomings of the maps at the time, they tend to conflict (see sketch-map No. 4 in the Judgment).

Determination of the frontier in the disputed area (paras. 112–174)

1. *The end-point in the west* (paras. 112–113)

The Chamber begins by fixing the end-point of the frontier already established between the Parties by agreement, in other words the western extremity of the disputed area. They have not clearly indicated this point, but the Chamber considers that it can justifiably conclude that both Parties accept the frontier line shown on the 1 : 200,000 scale map of West Africa published by the IGN to the south of the point with the geographical coordinates 1° 59′ 01″ W and 14° 24′ 40″ N (point A on the map annexed to the Judgment). It is from that point that the Parties are requesting it to indicate the line of their common frontier in an easterly direction.

2. *Villages and farming hamlets* (paras. 114–117)

The Chamber considers it necessary to examine the meaning to be ascribed to the word "village", since the regulative texts which fix the district boundaries generally refer merely to the villages comprising them, without further geographical clarification. It frequently happens that the inhabitants of a village cultivate land some distance away, taking up residence in "farming hamlets" forming dependencies of the village. The Chamber has to decide whether, for the purpose of the delimitation which it is asked to effect, the farming hamlets form part of the villages on which they depend. It is not persuaded that, when a village was a feature used to define the composition of a wider administrative entity, these farming hamlets were always taken into consideration in drawing the boundary of such an entity. It is only when it has examined all the available information relating to the extent of a particular village that it will be able to ascertain whether a particular piece of land is to be treated as part of that village despite its lack of a connection with it, or as a satellite hamlet which does not fall within the boundaries of the village.

3. *The sector of the four villages* (paras. 118–126)

Since Order 2728 AP defines the boundary between the *cercles* of Mopti and Ouahigouya in terms of the villages "left" to the *cercle* of Mopti, the Chamber identifies the villages in question and ascertains their territorial extent. It finds that Burkina Faso does not contest the Malian character of the village of Yoro, and that there is no disagreeement regarding the first part of the frontier, which runs in a northerly direction from point A as far as the point with the co-ordinates 1° 58′ 49″ W and 14° 28′ 30″ N (point B).

As for Dionouga, the Parties agree in identifying it with the village of Dioulouna mentioned in the Order. The Chamber considers that it can conclude from the information available to it, especially in relation to the track-laying operations undertaken on the orders of the administrators concerned, these being a significant element of the "*effectivités*", that the administrative boundary at the relevant time during the colonial period intersected the track connecting this village to the nearby village of Diguel at a distance of approximately 7.5 kilometres to the south of Dionouga. The frontier line therefore does likewise, at the point with the co-ordinates 1° 54′ 24″ W and 14° 29′ 20″ N (point C).

As for the villages of Oukoulou and Agoulourou, mentioned in Order 2728 AP, the Chamber emphasizes that it is quite irrelevant whether these villages are now in existence or not. The fact that they may have disappeared has no impact on the boundary which was defined at the time. It may, however, be noted that the positions of the villages of Kounia and Oukoulourou correspond to those of the two villages referred to in the Order.

As regards Koubo, about which there is some confusion of nomenclature the information available to the Chamber is not sufficient to establish with certainty whether it is the village of Kobou or the hamlet of Kobo which corresponds to the village of Koubo mentioned in the Order. But since the hamlet lies only 4 kilometres from the village, the Chamber considers it reasonable to treat them as a whole, drawing the frontier in such a way as to leave both of them to Mali.

The Chamber therefore considers that a line drawn at a distance of approximately 2 kilometres to the south of the present-day villages of Kounia and Okoulourou corresponds to the boundary described in Order 2728 AP. This line runs through the point with the co-ordinates 1° 46′ 38″ W and 14° 28′ 54″ N (point D) and through the point with the co-ordinates 1° 40′ 40″ W and 14° 30′ 03″ N (point E).

4. *The pool of Toussougou, the pool of Kétiouaire and the pool of Soum* (paras. 127–150).

The line described in Order 2728 AP of 1935 extends in a "markedly north-east" direction, "passing to the south of the pool of Toussougou and culminating in a point located to the east of the pool of Kétiouaire". There is a problem as to the whereabouts of these pools, since none of the maps contemporary with the Order which the Parties have presented to the Chamber shows any pools bearing these names. However, both Parties admit that there is at least one pool in the region of the village of Toussougou, while offering as evidence only maps which contradict one another. The question therefore arises whether the pool of Féto Maraboulé, which lies to the south-west of the village and has only recently been shown on the maps, is an integral part of this pool. The Chamber's opinion is that the two pools remain separate, even during the rainy season, and that the pool of

Féto Maraboulé is not to be identified with the pool of Toussougou referred to in the Order, which is smaller and lies close to the village with the same name. Moreover, an identification of the two pools would have an impact on the course of the line. The Chamber, which has to interpret the reference to the pool of Toussougou in Order 2728 AP, considers that the interpretation to be made must be such as to minimize the margin of error involved in defining the tripoint at which, according to letter 191 CM2, the *cercles* of Mopti, Ouahigouya and Dori meet. Before defining the course of the line in relation to the pool of Toussougou, the Chamber attempts to locate the pool of Kétiouaire, near which the boundary described in Order 2728 AP also ran.

In Order 2728 AP, the pool of Kétiouaire constitutes an important element of the boundary therein defined. It therefore has to be ascertained whether, in 1935, there was a pool lying in a "markedly north-east" direction in relation to a point situated "to the south of the pool of Toussougou", close to the tripoint of the *cercles* of Mopti, Gourma-Rharous and Dori, and to the west of it. After due appraisal of all the information available to it, the Chamber is unable to locate the pool of Kétiouaire. Nor does it consider any identification possible between the pool of Kétiouaire and the pool of Soum, which is situated some kilometres to the east/north-east of the pool of Toussougou and close to the meeting point, not of the three *cercles* mentioned above, but of the *cercles* of Mopti, Ouahigouya and Dori.

The Chamber remains persuaded by the case file that the pool of Soum is a frontier pool, but finds no indications dating from the colonial period from which the line could be said to run either to the north or to the south of the pool, or to divide it. This being so, the Chamber notes that although it has received no mandate from the Parties to make its own free choice of an appropriate frontier, it has nevertheless the task of drawing a precise line, and for that purpose can appeal to the equity *infra legem* which the Parties have themselves acknowledged to be applicable in the present case. In order to achieve an equitable solution along these lines, on the basis of the applicable law, the Chamber finds that account must be taken, in particular, of the circumstances in which the *commandants* of two adjacent *cercles*, one in Mali and the other in Upper Volta, recognized in a 1965 agreement, not endorsed by the competent authorities that the pool should be shared. It concludes that the pool of Soum must be divided in two in an equitable manner. The line should therefore cross the pool in such a way as to divide its maximum area during the rainy season equally between the two States.

The Chamber notes that this line does not pass through the coordinates mentioned in letter 191 CM2, and concludes from an investigation of the topographical data that the tripoint must have lain to the south-east of the point indicated by these co-ordinates. Since this letter did not become a regulative text, it ranks only as evidence of the boundary which had "*de facto* value" at the time. It now transpires that the maps then available were not sufficiently accurate to warrant such a precise definition. Thus the fact that these co-ordinates are found to have been defined with less accuracy than had been thought does not contradict the Governor-General's intention or deprive the letter of probative force.

The boundary in this region takes the following course: from point E, the line continues straight as far as a point with the co-ordinates 1° 19′ 05″ W and 14°

43′ 45″ N, situated approximately 2.6 kilometres south of the pool of Toussougou (point F), and then reaches the pool of Soum at the point with the co-ordinates 1° 05′ 34″ W and 14° 47′ 04″ N (point G); it crosses the pool from west to east, dividing it equally.

5. *The sector from the pool of Soum to Mount Tabakarech* (paras. 151–156)

In order to determine the line of the frontier east of the pool of Soum, the Chamber has to refer to the wording of letter 191 CM2 of 1935, which it has found to possess probative value. According to Burkina Faso, the line follows the indications in this letter and on the Blondel la Rougery map of 1925, from the point with the co-ordinates 0° 50′ 47″ W and 15° 00′ 03″ N, as far as the pool of In Abao. There seems to be no doubt that the purpose of letter 191 CM2 was to define in textual form a boundary shown on that map, and here the Parties are in agreement. Mali has emphasized the inaccuracy and shortcomings of this map as regards the toponomy and orography. The Chamber considers that in the sector from the pool of Soum to Tabakarech no problem arises in the selection of a map. In the absence of other indications to the contrary, the letter must be interpreted as contemplating a straight line connecting Mount Tabakarech to the tripoint where the boundaries of the *cercles* of Mopti, Ouahigouya and Dori converge.

The Chamber concludes that from point G the frontier runs in a north-north-easterly direction as far as the point mentioned by Burkina Faso, and from that point to Mount Tabakarech. This hill is to be identified with the elevation which appears on the IGN 1:200,000 map under the name of Tin Tabakat, with the geographical co-ordinates 0° 43′ 29″ W and 15° 05′ 00″ N (point H).

6. *The pool of In Abao* (paras. 157–163)

In determining the next section of the line, the Chamber must refer to the Order made by the Governor-General of French West Africa on 31 December 1922. In that Order, from the pool of In Abao the western boundary of the *cercle* of Gao follows "the northern boundary of Upper Volta". The boundary to be established by the Chamber must include that pool; the pool must therefore be identified in order to determine the frontier line in relation to it. The information on the various maps concerning the location and size of the pool is contradictory (see sketch-map No. 5 in the Judgment). From the information available the Chamber considers it likely that the pool is the one located at the junction of two marigots, one being the Béli, running from west to east, and the other running from north to south. In the absence of more precise and reliable information than has been submitted to it concerning the relationship between the frontier line and the pool of In Abao, the Chamber must conclude that the boundary crosses the pool in such a way as to divide it equally between the two Parties.

The frontier must follow the IGN line from point H as far as the point with the co-ordinates 0° 26′ 35″ W and 15° 05′ 00″ N (point I) where it turns south-east to join the Béli. It continues straight as far as point J, which lies on the west bank of the pool of In Abao, and point K, which lies on the east bank of the same pool. From point K, the line once more runs in a north-easterly direction, and rejoins the IGN line at the point where that line, after leaving the Béli to head north-eastward, again turns south-east to form an orographic boundary (point L —0° 14′ 44″ W and 15° 04′ 42″ N). Points J and K will be determined with the assistance of experts appointed pursuant to Article IV of the Special Agreement.

7. *The region of the Béli* (para. 164)

For the whole of this region Mali, rejecting letter 191 CM2 of 1935, argues in favour of a frontier running along the marigot. The two Parties have debated at length the choice which was open to the administering power, as between a hydrographic frontier along the Béli and an orographic frontier along the crestline of the elevations rising to the north of the marigot. In the Chamber's opinion, letter 191 CM2 proves that the orographic boundary was adopted. As for the boundary line described in that letter, the Chamber notes that the IGN map enjoys the approval of both Parties, at least in regard to its representation of the topography. It sees no reason to depart from the broken line of small crosses which is shown on that map and appears to be a faithful representation of the boundary described in letter 191 CM2, except with regard to the easternmost part of the line, where the problem arises of Mount N'Gouma.

8. *The heights of N'Gouma* (paras. 165–174)

With regard to the final segment of the frontier line, the essential question for the Chamber is the location of the "heights of N'Gouma" mentioned in the erratum to the 1927 Order relating to the boundaries between Upper Volta and Niger (see sketch-map No. 6 in the Judgment). That erratum defined the boundary as "a line starting at the heights of N'Gouma, passing through the Kabia ford ...". Mali has argued that this text was invalidated by a factual error, in that it referred to Mount N'Gouma as being to the north of the ford, whereas it was actually located south-west of it, as shown on the 1960 IGN map, which, according to Mali, is the only accurate picture of the situation. The Chamber has already stated that the text of the Order and of the erratum should not be set aside *in limine*; their probative value has to be appraised in order to determine the end-point of the frontier. It emphasizes that the maps of the period, such as the Blondel la Rougery map of 1925, locate Mount N'Gouma to the north of the Kabia ford, and that this location is also borne out by a 1:1,000,000 map, evidence which the Chamber considers cannot be overlooked, although the official body which approved it is unknown. Although the 1:200,000 IGN map of 1960 attaches the name N'Gouma to an elevation situated south-east of the ford, it also contains altimetric information from which it may be inferred that elevations ranged in a quarter-circle between a position north of the ford and another east-south-east of it together constitute an ensemble to which the name "N'Gouma" could be given. The existence of elevations to the north of the ford has, moreover, been confirmed by observations made on the ground in 1975.

Since the Chamber is not aware of any oral tradition going back at least to 1927 which might serve to contradict the indications given by the maps and documents of the period, it concludes that the Governor-General, in the 1927 Order and the erratum and in his letter 191 CM2 of 1935, described an existing boundary which passed through elevations rising to the north of the Kabia ford, and that the administrators considered, rightly or wrongly, that those elevations were known to the local people as the "heights of N'Gouma". The Chamber has therefore only to ascertain the location, within the area of high ground surrounding the ford, of the end-point of the boundary defined by the above-mentioned texts. It concludes that this point should be fixed 3 kilometres to the north of the ford, at the spot defined by the co-ordinates 0° 14′ 39″ E and 14° 54′ 48″ N (point M).

The line of the frontier (para. 175)

The Chamber fixes the line of the frontier between the Parties in the disputed area. This line is reproduced, for illustrative purposes, on a map which is a compilation of five sheets of the 1:200,000 IGN map and is annexed to the Judgment.

Demarcation (para. 176)

The Chamber is ready to accept the task which the Parties have entrusted to it, and to nominate three experts to assist them in the demarcation operation, which is to take place within one year of the delivery of the Judgment. In its opinion, however, it is inappropriate to make in its Judgment the nomination requested by the Parties, which will be made later by means of an Order.

Provisional measures (paras. 177–178)

The Judgment states that the Order of 10 January 1986 ceases to be operative upon the delivery of the Judgment. The Chamber notes with satisfaction that the Heads of State of Burkina Faso and the Republic of Mali have agreed "to withdraw all their armed forces from either side of the disputed area and to effect their return to their respective territories".

Binding force of the Judgment (para. 178)

The Chamber also notes that the Parties, already bound by Article 94, paragraph 1, of the Charter of the United Nations, expressly declared in Article IV, paragraph 1, of the Special Agreement that they "accept the Judgment of the Chamber ... as final and binding upon them". The Chamber is happy to record the attachment of both Parties to the international judicial process and to the peaceful settlement of disputes.

Operative clause (para. 179)

"THE CHAMBER,

"Unanimously,

"*Decides*

"A. That the frontier line between Burkina Faso and the Republic of Mali in the disputed area, as defined in the Special Agreement concluded on 16 September 1983 between those two States, is as follows:

"(1) From a point with the geographical co-ordinates 1° 59′ 01″ W and 14° 24′ 40″ N (point A), the line runs in a northerly direction following the broken line of small crosses appearing on the map of West Africa on the scale 1:200,000 published by the French Institut géographique national (IGN) (hereinafter referred to as 'the IGN line') as far as the point with the geographical co-ordinates 1° 58′ 49″ W and 14° 28′ 30″ N (point B).

"(2) At point B, the line turns eastwards and intersects the track connecting Dionouga and Diguel at approximately 7.5 kilometres from Dionouga at a point with the geographical co-ordinates 1° 54′ 24″ W and 14° 29′ 20″ N (point C).

"(3) From point C, the line runs approximately 2 kilometres to the south of the villages of Kounia and Oukoulourou, passing through the point with the geographical co-ordinates 1° 46′ 38″ W and 14° 28′ 54″ N (point D), and the point with the co-ordinates 1° 40′ 40″ W and 14° 30′ 03″ N (point E).

"(4) From point E, the line continues straight as far as a point with the geographical co-ordinates 1° 19′ 05″ W and 14° 43′ 45″ N (point F), situated approximately 2.6 kilometres to the south of the pool of Toussougou.

"(5) From point F, the line continues straight as far as the point with the geographical co-ordinates 1° 05′ 34″ W and 14° 47′ 04″ N (point G) situated on the west bank of the pool of Soum, which it crosses in a general west-east direction and divides equally between the two States; it then turns in a generally north/north-easterly direction to rejoin the IGN line at the point with the geographical coordinates 0° 43′ 29″ W and 15° 05′ 00″ N (point H).

"(6) From point H, the line follows the IGN line as far as the point with the geographical co-ordinates 0° 26′ 35″ W and 15° 05′ 00″ N (point I); from there it turns towards the south-east and continues straight as far as point J defined below.

"(7) Points J and K, the geographical co-ordinates of which will be determined by the Parties with the assistance of the experts nominated pursuant to Article IV of the Special Agreement, fulfil three conditions: they are situated on the same parallel of latitude; point J lies on the west bank of the pool of In Abao and point K on the east bank of the pool; the line drawn between them will result in dividing the area of the pool equally between the Parties.

"(8) At point K the line turns towards the north-east and continues straight as far as the point with the geographical co-ordinates 0° 14′ 4″ W and 15° 04′ 42″ N (point L), and, from that point, continues straight to a point with the geographical co-ordinates 0° 14′ 39″ E and 14° 54′ 48″ N (point M), situated approximately 3 kilometres to the north of the Kabia ford.

"B. That the Chamber will at a later date, by Order, nominate three experts in accordance with Article IV, paragraph 3, of the Special Agreement of 16 September 1983."

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Judges ad hoc Luchaire and Abi-Saab appended separate opinions to the Judgment.[227]

(ii) *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)*[228]

On 11 December 1986 the Governments of the Republic of El Salvador and the Republic of Honduras jointly notified to the Registrar the "Special Agreement between El Salvador and Honduras to submit the land, island and maritime frontier dispute between the two States to the International Court of Justice", concluded by them on 24 May 1986, which had entered into force on 1 October 1986. The Special Agreement defined the questions submitted for decision and provided for submission of those questions to a chamber of the Court composed of three Members and to comprise, in addition, two judges *ad hoc*. The Court understood the Agreements as requesting the Court to form a chamber to deal with the case in accordance with Articles 26, paragraph 2, of its Statute.

C. REQUEST FOR AN ADVISORY OPINION

Application for Review of Judgment No. 333 of the United Nations Administrative Tribunal[229]

As in previous similar cases,[230] the Court decided not to hear oral statements, and the United Nations and the States having presented written statements were so informed by a letter of 3 November 1986.

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6. INTERNATIONAL LAW COMMISSION[231]

THIRTY-EIGHTH SESSION OF THE COMMISSION[232]

The International Law Commission held its thirty-eighth session at Geneva from 5 May to 11 July 1986. The Commission considered all items on its agenda except for the item "Relations between States and international organizations (second part of the topic)", which the Commission was unable to consider because of lack of time.

On the question of the topic "Jurisdictional immunities of States and their property," the Commission had before it the eighth report of the Special Rapporteur,[233] which set out, or proposed certain changes in, the draft articles that were still under consideration in the Commission in plenary and which had not as yet been referred to the Drafting Committee, namely: part I (Introduction): article 2 (Use of terms), paragraph 1 (*e*) and 2; article 3 (Interpretative provisions), paragraph 1; article 4 (Jurisdictional immunities not within the scope of the present article); and article 5 (Non-retroactivity of the present articles); and part V (Miscellaneous provisions): article 25 (Immunities of personal sovereigns and other heads of State); article 26 (Service of process and judgement in default of appearance); article 27 (Procedural privileges); and article 28 (Restriction and extension of immunities and privileges). The eighth report also contained proposals for draft articles on part VI (Settlement of disputes) and part VII (Final provisions) for future consideration by the Commission in finalizing the draft articles. Following its discussion of the topic, the Commission adopted on first reading the draft articles on the topic as a whole and decided that the draft articles should be transmitted through the Secretary-General to Governments for comments and observations.

Regarding the topic "Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier", the Commission had before it the seventh report submitted by the Special Rapporteur,[234] which contained proposed revised texts of and explanations to draft article 36, "Inviolability of the diplomatic bag"; article 37, "Exemptions from customs duties, dues and taxes"; article 41, "Non-recognition of States or Government or absence of diplomatic or consular relations"; article 42, "Relation of the present articles to other conventions and international agreements; and article 43, "Optional declaration of exceptions to applicability in regard to designated types of couriers and bags". The report also included the text of and explanations concerning a new draft article 39 entitled "Protective measures in case of *force majeure*" combining and replacing former draft article 39, "Protective measures in circumstances preventing the delivery of the diplomatic bag" and draft article 40, "Obligations of the transit State in case of *force majeure* or fortuitous event".

The Commission, at the conclusion of its session, adopted on first reading the draft articles on the topic as a whole and decided that they should be transmitted through the Secretary-General to Governments for comments and observations.

With respect to the topic "State responsibility", the Commission had before it the seventh report of the Special Rapporteur.[235] The report contained two parts, the draft articles, with commentaries, of part 3 of the topic, and the first section (which was neither introduced nor discussed at the current session) of the preparation for the second reading of part 1 of the draft articles concerning the written comments of Governments on draft articles of part 1. The Commission, at the conclusion of its discussion, decided to refer draft articles 1 to 5 of part 3 and its annex to the Drafting Committee. However, due to the exceptional shortening of the session of the Commission, the Drafting Committee was unable to give consideration to draft articles 1 to 5 of part 3 and its annex.

On the question of the draft Code of Offences against the Peace and Security of Mankind, the Commission had before it the fourth report on the topic[236] divided into five parts, namely: I. Crimes against humanity; II. War crimes; III. Other offences (related offences); IV. General principles; and V. Draft articles. The Commission, after engaging in an in-depth general discussion of parts I to IV of the fourth report, concerning the offences and the general principles, decided to defer consideration of the draft articles to future sessions. Meanwhile, the Special Rapporteur could recast the draft articles in the light of the opinions expressed and the proposals made at the current session by the members of the Commission, and the views that could be expressed in the Sixth Committee of the General Assembly at its forty-first session. The Commission again discussed the problem of the implementation of the Code, when it considered the principles relating to the application of criminal law in space.

Regarding the topic "International liability for injurious consequences arising out of acts not prohibited by international law", the Commission had before it the preliminary report[237] and the second report[238] of the Special Rapporteur. As the preliminary report had been intended only to analyse what had been done prior to its submission, in 1985, and to explain what the Special Rapporteur intended to do in his second report to the Commission, discussion at the current session of the Commission focused almost exclusively on the second report. In summing up the discussion, the Special Rapporteur noted one aspect to which was attached the greatest importance: namely, that the objections raised by some members to the solutions proposed in the second report, especially those relating to the obligations to provide information and to negotiate, were not directed against the underlying principles, but were related to the accompanying procedural difficulties. Finally, although the short time assigned to the topic was not sufficient for a full debate, it was considered appropriate to begin, in the next report, the drafting of articles developing the ideas put foward.

With respect to the topic "The law of the non-navigational uses of international watercourses", the Commission had before it the second report on the topic submitted by the Special Rapporteur.[239] In his second report the Special Rapporteur, after reviewing the status of the Commission's work on the topic, provided a statement of his views on articles 1 to 9 as proposed by the Special Rapporteur and currently before the Drafting Committee, as well as a review of the legal authority supporting those views. The report also contained a set of five

draft articles concerning procedural rules applicable in cases involving proposed new uses of international watercourses where such new use might cause appreciable harm to other States using the watercourse. Those members of the Commission who spoke on the topic commented generally on the five draft articles contained in the report of the Special Rapporteur. The Special Rapporteur indicated his intention to give the articles further consideration in the light of the constructive comments made by members of the Commission.

Consideration by the General Assembly

At its forty-first session, the General Assembly had before it the report of the International Law Commission on the work of its thirty-eighth session.[240] By its resolution 41/81 of 3 December 1986,[241] adopted on the recommendation of the Sixth Committee,[242] the General Assembly took note of the report of the International Law Commission; recommended that the Commission should continue its works on the topic in its current programme; expressed its satisfaction with the conclusions and intentions of the Commission concerning its procedures and methods of work, as reflected in paragraphs 250 to 261 of its report; and requested the Commission (*a*) to consider thoroughly (i) the planning of its activities for the term of office of its members, bearing in mind the desirability of achieving as much progress as possible in the preparation of draft articles on specific topics; (ii) its methods of work in all their aspects, bearing in mind the possibility of staggering the consideration of some topics; and (*b*) to indicate in its annual report those subjects and issues on which views expressed by Governments, either in the Sixth Committee or in written form, would be of particular interest for the continuation of its work.

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7. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW[243]

NINETEENTH SESSION OF THE COMMISSION[244]

The United Nations Commission on International Trade Law held its nineteenth session in New York from 23 June to 11 July 1986.

With respect to international payments, the Commission had before it the report of the Working Group on International Negotiable Instruments on the work of its fourteenth session,[245] a note by the Secretariat containing the text of the draft Convention on International Bills of Exchange and International Promissory Notes as revised by the Commission at its seventeenth session and by the Working Group at its thirteenth and fourteenth sessions,[246] and a note by the Secretariat in response to requests of the Working Group to undertake certain inquiries or to prepare certain draft provisions in implementation of decisions made by it.[247] The Commission commenced its deliberations on the draft Convention by discussing the draft articles that had been considered by the Working Group and the decisions taken by the Working Group concerning those articles, as reflected in the provisions of the draft Convention set forth in document A/CN.9/274. It then discussed other articles of the draft Convention. The Commission entrusted a drafting group with the implementation of its decisions and with the establishment of corresponding language versions in the six official

languages of the Commission. The Commission then considered the various procedures that might be followed for the adoption of the Convention. The first possible procedure was that the Commission recommend to the General Assembly that the Assembly convene a diplomatic conference to adopt as a convention the draft Convention as finalized at the current session of the Commission. The second possible procedure was that the draft Convention be reviewed by the Working Group on International Negotiable Instruments prior to the twentieth session of the Commission and be thereafter considered and approved by the Commission at its twentieth session. The Commission would then recommend to the Assembly that the draft Convention be adopted by the Assembly without a review of the substance of the text. The third possible procedure was that the draft Convention be considered and approved by the Commission at its twentieth session without an intervening review by the Working Group, but with the necessary preparatory work, including the establishment of draft final clauses, being done by the secretariat. The Commission would then recommend to the General Assembly that the draft Convention be adopted by the Assembly without a review of the substance of the text. Support and opposition was expressed for each of those procedures. At the conclusion of the deliberations on the three possible procedures, the second procedure was adopted. Accordingly, the Commission requested the secretariat to transmit the draft Convention as finalized at the current session to all States as soon as possible after the conclusion of the session, with a request that comments on the draft convention be submitted to the secretariat. The secretariat was also requested to submit to the Working Group draft final clauses to be included in the draft Convention. The Commission further decided that a period of two weeks should be allotted at its twentieth session for a discussion article by article of the draft Convention, taking into account the report of the Working Group on the work of its fifteenth session and the comments submitted by Governments. It was expected that the draft Convention would be transmitted to the General Assembly with the recommendation that it be adopted as a convention by the Assembly without amendment of the substance of the text.

Moreover, at the current session, the Commission had before it a report of the Secretary-General concerning the legal guide and possible future work by the Commission in the area of electronic funds transfers.[248] The report contained a brief summary of the replies received from Governments and international intergovernmental and non-governmental organizations and, in an annex, proposed various modifications to the legal guide in the light of those replies. The Commission welcomed the completion of the Legal Guide on Electronic Funds Transfers. It was generally agreed that the Legal Guide should be published in such a way as to achieve a wide distribution to interested circles. The prevailing view was that it would be inappropriate for the Commission to adopt the Legal Guide as a product of the work of the Commission itself without having engaged in substantive discussion on it. Accordingly, the Commission authorized the secretariat to publish the Legal Guide as a product of the work of the secretariat in all official languages of the United Nations. With respect to possible future work by the Commission in the area of electronic funds transfers, the Commission decided to undertake work on the formulation of model legal rules on electronic funds transfers and to entrust that work to the Working Group on International Negotiable Instruments, which might be renamed for this purpose the Working Group on International Payments.

In connection with the question of the new international economic order, the Commission had before it the report of its Working Group on the New International Economic Order on the work of its eighth session.[249] The report set forth the deliberations of the Working Group on the basis of the introduction to the legal guide on drawing up international contracts for the construction of industrial works and draft chapters of the guide, which had been prepared by the secretariat.[250] The Commission took note of the report of the Working Group on the work of its eighth session and welcomed the intention of the Working Group to submit the legal guide to the Commission at its twentieth session for its consideration.

In view of the fact that the work of the Commission on the legal guide on drawing up contracts for the construction of industrial works was approaching its conclusion, the Commission considered possible subjects in the area of the new international economic order on which work might be undertaken in the future. The Commission had before it a note by the secretariat entitled "Future work in the area of the new international economic order."[251] The note considered four possible subjects on which work might be undertaken: contracts for industrial cooperation; joint ventures; countertrade; and procurement. At the Commission's discussion there was very wide support for the view that work on procurement should be given priority. That subject was of great importance for the economic development of developing countries. Furthermore, depending on the results of preliminary studies on the major issues in procurement, it might be possible to prepare model regulations on procurement in the context of international trade. Work on procurement would therefore yield a concrete end-product. Moreover, the Commission noted that the secretariat did not have the resources to undertake work simultaneously on procurement, countertrade and joint ventures, and that the Working Group on the New International Economic Order could not commence work on more than one subject. Accordingly, it was decided that priority should be given to work on procurement. It was also decided that the subjects of countertrade and joint ventures should be placed on the Commission's work programme and that preliminary studies prepared by the secretariat on those subjects should be placed before the Commission at a future session. In the light of the preliminary studies, the Commission could decide on priority between those subjects.

With respect to the topic of liability of operators of transport terminals, the Commission had before it the report of the Working Group on International Contract Practices on the work of its ninth session.[252] The report set forth the deliberations and decisions of the Working Group regarding the draft articles of uniform rules on the liability of operators of transport terminals, which had been prepared by the secretariat. The Commission took note with appreciation of the report of the Working Group.

With regard to the current activities of international organizations related to the harmonization and unification of international trade law the Commission had before it a comprehensive report on the subject.[253] Views were expressed supporting the publication of a report of that nature. The Commission took note of the report with appreciation.

Regarding the current activities of other organizations in the field of international commercial arbitration, the Commission discussed a report of the Secretary-General on the subject.[254] The report covered activities of the Hague Con-

ference on Private International Law, the International Bar Association, the International Chamber of Commerce and the International Council for Commercial Arbitration. The aspects of arbitration dealt with in the report were multiparty arbitration, taking of evidence in arbitral proceedings, international court assistance in taking of evidence in arbitral proceedings, the law applicable to arbitration agreements, adaptation or supplementation of contracts by third persons, and a code of ethics for arbitrators in international commercial arbitration. It was agreed that the Commission, which had made major contributions in the field of international commercial arbitration, should continue to play a role in that rapidly developing field of law. It was suggested, in that connection, that the secretariat continue to monitor developments and to submit from time to time reports of the kind contained in document A/CN.9/280. The Commission requested the secretariat to submit at a future session in-depth studies on multiparty arbitration and on the taking of evidence in arbitral proceedings.

Regarding the legal aspects of automatic data processing, the Commission at its current session had before it a further report on the legal aspects of automatic data processing, with suggestions for future action to coordinate work in this field.[255] The Commission took note with appreciation of the report submitted to it and generally approved the course of action proposed therein.

With respect to training and assistance, the Commission considered a report of the Secretary-General[256] which described the measures taken by the secretariat to implement the decisions of the Commission and of the General Assembly in that field. It was noted that the subject-matter of the majority of the symposia and seminars reflected the considerable interest in the work of the Commission in the field of international commercial arbitration and in particular the current interest in the UNCITRAL Model Law on International Commercial Arbitration. The Commission took note with appreciation of the report.

Consideration by the General Assembly

At its forty-first session, the General Assembly, by its resolution 41/77 of 3 December 1986,[257] adopted on the recommendation of the Sixth Committee,[258] took note with appreciation of the report of the United Nations Commission on International Trade Law on the work of its nineteenth session; noted the progress made by the Commission at its nineteenth session in the preparation of a draft Convention on International Bills of Exchange and International Promissory Notes and, in that connection, requested the Commission to complete its work on the draft Convention during its twentieth session and decided to consider the draft Convention during its forty-second session, with a view to its adoption or other appropriate action; called upon the Commission to continue to take account of the relevant provisions of the resolutions concerning the new international economic order, as adopted by the General Assembly at its sixth and seventh special sessions; reaffirmed the importance, in particular for developing countries, of the work carried out by the Working Group on the New International Economic Order on a legal guide on the drawing up of international contracts for construction of industrial works, and noted with satisfaction the progress made in the preparation of the legal guide; welcomed the decision of the Commission to commence work on the subject of international procurement as a matter of priority; noted with particular satisfaction the completion by the Commission of the Legal Guide on Electronic Funds Transfers and welcomed its decisions to authorize the Secretary-General to publish the Legal Guide as a product of the

work of the secretariat, in all official languages of the United Nations, and to undertake work on the formulation of model legal rules on electronic funds transfers; reaffirmed the mandate of the Commission, as the core legal body within the United Nations system in the field of international trade law, to coordinate legal activities in that field in order to avoid duplication of effort and to promote efficiency, consistency and coherence in the unification and harmonization of international trade law and, in that connection, recommended that the Commission, through its secretariat, should continue to maintain close cooperation with the other international organs and organizations, including regional organizations, active in the field of international trade law; reaffirmed also the importance, in particular for developing countries, of the work of the Commission concerned with training and assistance in the field of international trade law and the desirability for it to sponsor symposia and seminars, in particular those organized on a regional basis, to promote such training and assistance; stressed the importance of bringing into effect the conventions emanating from the work of the Commission for the global unification and harmonization of international trade law; and recommended that the Commission should continue its work on the topics included in its programme of work.

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8. LEGAL QUESTIONS DEALT WITH BY THE SIXTH COMMITTEE OF THE GENERAL ASSEMBLY AND BY AD HOC LEGAL BODIES

(*a*) Observer status of national liberation movements recognized by the Organization of African Unity and/or by the League of Arab States

By its resolution 41/71 of 3 December 1986,[259] adopted on the recommendation of the Sixth Committee,[260] the General Assembly urged all States that had not done so, in particular those which were hosts to international organizations or to conferences convened by, or held under the auspices of, international organizations of a universal character, to consider as soon as possible the question of ratifying, or acceding to, the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character;[261] and called once more upon the States concerned to accord to the delegations of the national liberation movements recognized by the Organization of African Unity and/or by the League of Arab States, and accorded observer status by international organizations, the facilities, privileges and immunities necessary for the performance of their functions in accordance with the provisions of the Convention.

(*b*) Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts[262]

By its resolution 41/72 of 3 December 1986,[263] adopted on the recommendation of the Sixth Committee,[264] the General Assembly noted with appreciation the virtually universal acceptance of the Geneva Conventions of 1949,[265] noted, however, the fact that so far a lesser number of States had become parties to the

two additional Protocols; appealed to all States parties to the Geneva Conventions of 1949 to consider becoming parties also to the additional Protocols at the earliest possible date; and called upon all States becoming parties to Protocol I to consider making the declaration provided for under article 90 of that Protocol.

(*c*) Progressive development of the principles and norms of international law relating to the new international economic order

By its resolution 41/73 of 3 December 1986,[266] adopted on the recommendation of the Sixth Committee,[267] recognizing the need for the codification and progressive development of the principles and norms of international law relating to the new international economic order, and reiterating the importance of the analytical study submitted to the General Assembly at its thirty-ninth session by the United Nations Institute for Training and Research,[268] requested the Secretary-General to seek proposals of Member States concerning the most appropriate procedures to be adopted with regard to the consideration of the analytical study, as well as the codification and progressive development of the principles and norms of international law relating to the new international economic order; and recommended that the consideration of the most appropriate procedure for completing the elaboration of the process of codification and progressive development of the principles and norms of international law relating to the new international economic order, and of the forum that would be entrusted with the task, be undertaken by the General Assembly at its forty-second session, with a view to making a final decision after taking into account the proposals and suggestions made by Member States on the matter.

(*d*) Peaceful settlement of disputes between States

By its resolution 41/74 of 3 December 1986,[269] adopted on the recommendation of the Sixth Committee,[270] the General Assembly again urged all States to observe and promote in good faith the provisions of the Manila Declaration on the Peaceful Settlement of International Disputes[271] in the settlement of their international disputes, stressed the need to continue efforts to strengthen the process of the peaceful settlement of disputes through progressive development and codification of international law and through enhancing the effectiveness of the United Nations in that field; requested the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, during its session in 1987, to continue its work on the question of the peaceful settlement of disputes between States and, in that context: (*a*) to continue the consideration of the working paper on the resort to a commission of good offices, mediation or reconciliation within the United Nations[272] with the aim of submitting conclusions thereon to the General Assembly at the earliest possible date; (*b*) to examine the progress report of the Secretary-General on the preparation of a draft handbook on the peaceful settlement of disputes between States;[273] and requested the Secretary-General to continue the preparation of a draft handbook on the peaceful settlement of disputes between States, on the basis of the outline elaborated by the Special Committee and in the light of the views expressed in the course of the discussions in the Sixth Committee[274] and in the Special Committee,[275] and to report to the Special Committee at its session in 1987 on the progress of work before submitting to it the draft handbook in its final form, with a view to its approval at a later stage.

(*e*) Enhancing the effectiveness of the principles of non-use of force in international relations

In accordance with General Assembly resolution 40/70 of 11 December 1985, the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations met at United Nations Headquarters from 20 January to 13 February 1986.[276] The Committee, which reconstituted the Working Group, had before it the draft World Treaty on the Non-Use of Force in International Relations, submitted by the Union of Soviet Socialist Republics,[277] the working paper submitted at the 1979 session of the Committee by Belgium, France, the Federal Republic of Germany, Italy and the United Kingdom,[278] a revised working paper submitted at the 1981 session of the Committee by Benin, Cyprus, Egypt, India, Iraq, Morocco, Nepal, Nicaragua, Senegal and Uganda[279] and proposals submitted by Mr. Elaraby, the Chairman at the 1982 session[280] of the Committee. It also had before it the comments and suggestions of Governments received in accordance with the relevant General Assembly resolutions.

It was agreed that the Group would start substantive work with headings E, F and A in Mr. Elaraby's paper, which had at previous sessions elicited a measure of support. It was further agreed that the Working Group would then consider the remaining headings in Mr. Elaraby's paper.

Since the Committee had not completed its work, it generally recognized the desirability of further consideration of the question before it and that such efforts should be undertaken on the basis of the broadest possible agreement.

At its forty-first session, the General Assembly, by its resolution 41/76 of 3 December 1986,[281] adopted on the recommendation of the Sixth Committee,[282] took note of the report of the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations; decided that the Special Committee should complete a draft declaration on the enhancement of the effectiveness of the principle of non-use of force in international relations, including, as appropriate, recommendation on the peaceful settlement of disputes; and invited the Committee to submit its final report containing a draft declaration to the General Assembly at its forty-second session.

(*f*) Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives

By its resolution 41/78 of 3 December 1986,[283] adopted on the recommendation of the Sixth Committee,[284] the General Assembly took note of the report of the Secretary-General;[285] urged States to observe and to implement the principles and rules of international law governing diplomatic and consular relations and, in particular, to take all necessary measures in conformity with their international obligations to ensure effectively the protection, security and safety of all diplomatic and consular missions and representatives officially present in territories under their jurisdiction, including practicable measures to prohibit in their territories illegal activities of persons, groups and organizations that encouraged, instigated, organized or engaged in the perpetration of acts against the security and safety of such missions and representatives; called upon States to take all necessary measures at the national and international levels to

prevent any acts of violence against diplomatic and consular missions and representatives, as well as against missions and representatives to international intergovernmental organizations and officials of such organizations, and, in accordance with national law and treaties, to prosecute or extradite those who perpetrated such acts; called upon States that had not yet done so to consider becoming parties to the instruments relevant to the protection, security and safety of diplomatic and consular missions and representatives; called upon States, in cases where a dispute arose in connection with a violation of the principles and rules of international law concerning the inviolability of diplomatic and consular missions and representatives, to make use of the means for peaceful settlement of disputes, including the good offices of the Secretary-General; requested (*a*) all States to report to the Secretary-General as promptly as possible serious violations of the protection, security and safety of diplomatic and consular missions and representatives, as well as missions and representatives with diplomatic status to international intergovernmental organizations; (*b*) the States in which violations had taken place—and to the extent possible, the State where the alleged offender was present—to report as promptly as possible on measures taken to bring the offender to justice and eventually to communicate, in accordance with its laws, the final outcome of the proceedings against the offender, and on measures adopted with a view to preventing a repetition of such violations; and requested the Secretary-General to circulate to all States, the above-mentioned reports.

(*g*) Drafting of an international convention against the recruitment, use, financing and training of mercenaries

By its resolution 41/80 of 3 December 1986,[286] adopted on the recommendation of the Sixth Committee,[287] the General Assembly decided to renew the mandate of the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries to enable it to continue its work on the draft of an international convention against the recruitment, use, financing and training of mercenaries; requested the Ad Hoc Committee to use the draft articles contained in chapter V of its report on its fifth session,[288] entitled "Consolidated negotiating basis of a convention against the recruitment, use, financing and training of mercenaries", as a basis for future negotiation on the text of the proposed international convention; and invited the Ad Hoc Committee to take into account the suggestions and proposals of Member States submitted to the Secretary-General on the subject and the views and comments expressed at the fortieth[289] and forty-first[290] sessions of the General Assembly during the debates in the Sixth Committee devoted to the consideration of the report of the Ad Hoc Committee.

(*h*) Report of the Committee on Relations with the Host Country[291]

In accordance with its resolution 40/77 of 11 December 1985, the General Assembly decided that the Committee on Relations with the Host Country should continue its work in conformity with General Assembly resolution 2819 (XXVI) of 15 December 1971.

In its report to the General Assembly at its forty-first session, the Committee included a set of recommendations and conclusions whereby it urged the host country to take all necessary measures without delay in order to continue to

prevent any criminal acts, including harassment and activities violating the security of missions and safety of their personnel, or inviolability of their property, for the existence and functioning of all missions; also urged the host country to continue to take measures to apprehend, bring to justice and punish all those responsible for committing or conspiring to commit criminal acts against missions accredited to the United Nations as provided for in the 1972 Federal Act for the Protection of Foreign Officials and Official Guests of the United States; considered the issues raised by certain Member States in response to the request and action by the host country to reduce the size of their missions, and urged the parties, in accordance with the suggestion contained in the statement by the Legal Counsel,[292] to follow the path of consultations with a view to reaching solutions to that matter in accordance with the Agreement between the United Nations and the United States of American regarding the Headquarters of the United Nations; called upon the host country to avoid actions not consistent with meeting effectively obligations undertaken by it in accordance with international law in relation to the privileges and immunities of Member States, including those relevant to their participation in the work of the United Nations; and, with a view to facilitating the course of justice, called upon the missions of Member States to cooperate as fully as possible with the federal and local United States authorities in cases affecting the security of those missions and their personnel.

The General Assembly, by its resolution 41/82 of 3 December 1986,[293] adopted on the recommendation of the Sixth Committee,[294] endorsed the recommendations of the Committee on Relations with the Host Country contained in paragraph 87 of its report; urged the host country to take all necessary measures without delay to continue to prevent criminal acts, including harassment and violations of the security of missions and the safety of their personnel or infringements of the inviolability of their property, in order to ensure the existence and functioning of all missions, including practicable measures to prohibit illegal activities of persons, groups or organizations that encouraged, instigated, organized, or engaged, in the perpetration of acts and activities against the security and safety of such missions and representatives; urged the host country and the member States that had raised the issues in response to the request and to action by the host country to reduce the size of their missions to follow the path of consultations with a view to reaching solutions to that matter, in accordance with the Headquarters Agreement; and stressed the importance of a positive perception of the work of the United Nations, expressed concern about a negative public image and, therefore, urged that efforts be continued to build up public awareness by explaining, through all available means, the importance of the role played by the United Nations and the missions accredited to it in the strengthening of international peace and security.

(i) Questions concerning the Charter of the United Nations and the strengthening of the role of the Organization

In accordance with General Assembly resolution 40/78 of December 1985, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization met at United Nations Headquarters from 7 April to 2 May 1986.[295] The Committee established a Working Group.

With regard to the topic of the peaceful settlement of disputes between States, the Working Group considered the proposal contained in the working paper on the resort to a commission of good offices, mediation or conciliation within the United Nations, submitted to the Special Committee by Romania.[296] The consensus of the Working Group was that the discussion had contributed a positive step and had revealed the existence of some elements on which general agreement might well be possible and that that should enable further progress on the proposal. Moreover, the Group examined the progress report of the Secretary-General on the progress of work on the draft handbook on the peaceful settlement of disputes between States.[297] After a short debate, the Working Group took note of the report.

Dealing with the topic of the rationalization of existing procedures of the United Nations, the Working Group had before it a revised version[298] of a working paper submitted at the previous session by France and the United Kingdom of Great Britain and Northern Ireland. After commenting on the topic in general, the Working Group discussed paragraphs 1 to 5 of the working paper in detail.

With regard to the topic of the maintenance of international peace and security, the Working Group had before it a revised version[299] of the working paper submitted at previous sessions by Belgium, the Federal Republic of Germany, Italy, Japan, New Zealand and Spain and a working paper[300] submitted by Czechoslovakia, the German Democratic Republic and Poland. The Group exchanged preliminary views on the two working papers, undertook the concrete examination of document A/AC.182/L.38/Rev.2, taking into account the relevant provisions of document A/AC.182/L.48, with a view to identifying points of agreement, and considered document A/AC.182/L.48.

At its forty-first session the General Assembly, by its resolution 41/83 of 3 December 1986,[301] adopted on the recommendation of the Sixth Committee,[302] requested the Special Committee at its session in 1987: (*a*) to accord priority to the question of the maintenance of international peace and security in all its aspects in order to strengthen the role of the United Nations, in particular the Security Council, and to enable it to discharge fully its responsibilities under the Charter in that field, and to work with the aim of submitting its conclusions to the General Assembly by reaching general agreement, and in so doing: (i) to concentrate its efforts on the question of the prevention and removal of threats to peace and, of situations that might lead to international friction or give rise to a dispute, on the basis of working paper A/AC.182/L.38/Rev.2 and on any other proposals specific to that question, with a view to completing its consideration thereof and elaborating appropriate conclusions thereon for submission to the General Assembly as soon as possible; and (ii) to continue its consideration of the proposal contained in working paper A/AC.182/L.48 on the role of Member States and of the United Nations in the maintenance of international peace and security; (*b*) to continue its work on the question of the peaceful settlement of disputes between States; requested the Committee to keep the question of the rationalization of the procedures of the United Nations under active review; and requested the Secretary-General to continue the preparation of a draft handbook on the peaceful settlement of disputes between States.

(j) Development and strengthening of good-neighbourliness between States

By its resolution 41/84 of 3 December 1986,[303] adopted on the recommendation of the Sixth Committee,[304] the General Assembly reaffirmed that good-neighbourliness fully conformed with the purposes of the United Nations and should be founded upon the strict observance of the principles of the United Nations as embodied in the Charter and in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,[305] and so presupposed the rejection of any acts seeking to establish zones of influence or domination; called once again upon States, in the interest of the maintenance of international peace and security, to develop good-neighbourly relations, acting on the basis of those principles; took note of the report of the Subcommittee on Good-Neighbourliness,[306] which had functioned within the Sixth Committee during the forty-first session of the General Assembly; and decided to continue and complete at its forty-second session, on the basis of the resolution and the report of the Subcommittee, the task of identifying and clarifying the elements of good-neighbourliness within the framework of a subcommittee on good-neighbourliness.

(*k*) Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally

By its resolution 41/85 of 3 December 1986,[307] adopted on the recommendation of the Sixth Committee,[308] the General Assembly, taking note with appreciation of the work done on the draft Declaration in question in the Third and Sixth Committees, as well as the efforts made by Member States representing different legal systems, during the consultations held at Headquarters from 16 to 27 September 1985 and early in the forty-first session, to join in the common endeavour of completing the work on the draft, adopted the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, the text of which was annexed to the resolution.

ANNEX

Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally

The General Assembly,

Recalling the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women,

Recalling also the Declaration of the Rights of the Child, which it proclaimed by its resolution 1386 (XIV) of 20 November 1959,

Reaffirming principle 6 of that Declaration, which states that the child shall, wherever possible, grow up in the care and under the responsibility of his parents and, in any case, in an atmosphere of affection and of moral and material security,

Concerned at the large number of children who are abandoned or become orphans owing to violence, internal disturbance, armed conflicts, natural disasters, economic crises or social problems,

Bearing in mind that in all foster placement and adoption procedures the best interests of the child should be the paramount consideration,

Recognizing that under the principal legal systems of the world, various valuable alternative institutions exist, such as the Kafala of Islamic Law, which provide substitute care to children who cannot be cared for by their own parents,

Recognizing further that only where a particular institution is recognized and regulated by the domestic law of a State would the provisions of this Declaration relating to that institution be relevant and that such provisions would in no way affect the existing alternative institutions in other legal systems,

Conscious of the need to proclaim universal principles to be taken into account in cases where procedures are instituted relating to foster placement or adoption of a child, either nationally or internationally.

Bearing in mind, however, that the principles set forth hereunder do not impose on States such legal institutions as foster placement or adoption,

Proclaims the following principles:

A. General family and child welfare

Article 1

Every State should give a high priority to family and child welfare.

Article 2

Child welfare depends upon good family welfare.

Article 3

The first priority for a child is to be cared for by his or her own parents.

Article 4

When care by the child's own parents is unavailable or inappropriate, care by relatives of the child's parents, by another substitute—foster or adoptive—family or, if necessary, by an appropriate institution should be considered.

Article 5

In all matters relating to the placement of a child outside the care of the child's own parents, the best interests of the child, particularly his or her need for affection and right to security and continuing care, should be the paramount consideration.

Article 6

Persons responsible for foster placement or adoption procedures should have professional or other appropriate training.

Article 7

Governments should determine the adequacy of their national child welfare services and consider appropriate actions.

Article 8

The child should at all times have a name, a nationality and a legal representative. The child should not, as a result of foster placement, adoption or any alternative regime, be deprived of his or her name, nationality or legal representative unless the child thereby acquires a new name, nationality or legal representative.

Article 9

The need of a foster or an adopted child to know about his or her background should be recognized by persons responsible for the child's care, unless this is contrary to the child's best interests.

B. FOSTER PLACEMENT

Article 10

Foster placement of children should be regulated by law.

Article 11

Foster family care, though temporary in nature, may continue, if necessary, until adulthood but should not preclude either prior return to the child's own parents or adoption.

Article 12

In all matters of foster family care, the prospective foster parents and, as appropriate, the child and his or her own parents should be properly involved. A competent authority or agency should be responsible for supervision to ensure the welfare of the child.

C. ADOPTION

Article 13

The primary aim of adoption is to provide the child who cannot be cared for by his or her own parents with a permanent family.

Article 14

In considering possible adoption placements, persons responsible for them should select the most appropriate environment for the child.

Article 15

Sufficient time and adequate counseling should be given to the child's own parents, the prospective adoptive parents and, as appropriate, the child in order to reach a decision on the child's future as early as possible.

Article 16

The relationship between the child to be adopted and the prospective adoptive parents should be observed by child welfare agencies or services prior to the adoption. Legislation should ensure that the child is recognized in law as a member of the adoptive family and enjoys all the rights pertinent thereto.

Article 17

If a child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the country of origin, intercountry adoption may be considered as an alternative means of providing the child with a family.

Article 18

Governments should establish policy, legislation and effective supervision for the protection of children involved in intercountry adoption. Intercountry adoption should, wherever possible, only be undertaken when such measures have been established in the States concerned.

Article 19

Policies should be established and laws enacted, where necessary, for the prohibition of abduction and of any other act for illicit placement of children.

Article 20

In intercountry adoption, placements should, as a rule, be made through competent authorities or agencies with application of safeguards and standards equivalent to those existing in respect of national adoption. In no case should the placement result in improper financial gain for those involved in it.

Article 21

In intercounty adoption through persons acting as agents for prospective adoptive parents, special precautions should be taken in order to protect the child's legal and social interests.

Article 22

No intercountry adoption should be considered before it has been established that the child is legally free for adoption and that any pertinent documents necessary to complete

the adoption, such as the consent of competent authorities, will become available. It must also be established that the child will be able to migrate and to join the prospective adoptive parents and may obtain their nationality.

Article 23

In intercountry adoption, as a rule, the legal validity of the adoption should be assured in each of the countries involved.

Article 24

Where the nationality of the child differs from that of the prospective adoptive parents, all due weight shall be given to both the law of the State of which the child is a national and the law of the State of which the prospective adoptive parents are nationals. In this connection due regard shall be given to the child's cultural and religious background and interests.

(*l*) Draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

By its decision 41/418 of 3 December 1986,[309] adopted on the recommendation of the Sixth Committee,[310] the General Assembly took note of the report of the Working Group on the Draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;[311] and decided that an open-ended working group of the Sixth Committee would be established at its forty-second session in order to conduct a further examination of the draft with a view to the completion of the principles.

(*m*) Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations

By its decision 41/420 of 3 December 1986,[312] adopted on the recommendation of the Sixth Committee,[313] the General Assembly welcomed the adoption, on 20 March 1986, by the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations, of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations;[314] considered that the Convention should be signed on behalf of the United Nations; and expressed the hope that States, as well as international organizations having the capacity to conclude treaties, would consider taking the steps necessary to become parties to the Convention at an early date.

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9. RESPECT FOR THE PRIVILEGES AND IMMUNITIES OF OFFICIALS OF THE UNITED NATIONS AND THE SPECIALIZED AGENCIES AND RELATED ORGANIZATIONS

By its resolution 41/205 of 11 December 1986,[315] adopted on the recommendation of the Fifth Committee,[316] the General Assembly took note with concern of the report submitted by the Secretary-General,[317] on behalf of the Administrative Committee on Coordination, and of a number of negative developments reported therein, which together represented a deterioration of the

situation with regard to the observance of the principles related to the respect for the privileges and immunities of officials of the United Nations and the specialized agencies and related organizations; deplored the growing number of cases where the functioning, safety and well-being of officials had been adversely affected, including cases of detention in Member States and abduction by armed groups and individuals; also deplored the increasing number of cases in which the lives and well-being of officials had been placed in jeopardy during the exercise of their official functions; called upon all Member States scrupulously to respect the privileges and immunities of all United Nations officials and to refrain from any acts that would impede such officials in the performance of their functions, thereby seriously affecting the proper functioning of the Organization; called upon all Member States currently holding United Nations officials under arrest or detention, or otherwise impeding them in the proper discharge of their duties, to review those cases and to coordinate efforts with the Secretary-General to resolve each case with all due speed; called upon the staff of the United Nations and the specialized agencies and related organizations to comply with the obligations resulting from the Staff Regulations and Rules of the United Nations, in particular regulation 1.8, and from the equivalent provisions governing the staff of the other agencies; and called upon the Secretary-General, as chief administrative officer of the United Nations, to continue personally to act as the focal point in promoting and ensuring the observance of the privileges and immunities of officials of the United Nations and the specialized agencies and related organizations by using all such means as were available to him.

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10. COOPERATION BETWEEN THE UNITED NATIONS AND THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

By its resolution 41/5 of 17 October 1986,[318] the General Assembly took note of the report of the Secretary-General;[319] extended its congratulations to the Asian-African Legal Consultative Committee on its thirtieth anniversary for its highly commendable work in promoting interregional and international cooperation supportive of the efforts of the United Nations in that regard; noted with appreciation the continuing efforts of the Committee towards strengthening the role of the United Nations and its various organs, including the International Court of Justice, through programmes and initiatives undertaken by the Committee; and noted with satisfaction the commendable progress achieved during the past five years towards enhancing cooperation between the United Nations and the Committee in wider areas.

B. General review of the legal activities of intergovernmental organizations related to the United Nations

1. INTERNATIONAL LABOUR ORGANISATION[320]

The International Labour Conference (ILC), which held its 72nd session at Geneva in June 1986, adopted an instrument for the amendment of the Constitution of the International Labour Organisation.[321] This instrument touches on important provisions of the ILO Constitution relating in particular to the composition of the Governing Body (article 7); the procedure for nomination of the Director-General (article 8); the quorum rule in the International Labour Conference (article 17); as well as the procedure for the amendment of the Constitution (article 36); and makes a number of consequential amendments to other provisions of the Constitution. A Convention and a Recommendation concerning Safety in the Use of Asbestos were also adopted.[322]

The Committee of Experts on the Application of Conventions and Recommendations met at Geneva from 12 to 25 March 1986 and presented its report.[323]

The Governing Body Committee on Freedom of Association met at Geneva and adopted Report No. 243[324] (232nd Session of the Governing Body, March 1986); reports Nos. 244[325] and 245 (233rd Session of the Governing Body, May–June 1986).

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2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

At the secretariat level, the legal activities of FAO are coordinated in a single Legal Office directed by the Legal Counsel and consisting of the Office of the Legal Counsel and the Legislation Branch.[326]

(*a*) Constitutional and general legal matters

(i) *FAO's immunity from legal process in Italy*

Pursuant to the wish expressed by the Conference at its twenty-third session in November 1985, representatives of the host Government and FAO met on a number of occasions in 1986 with a view to identifying a mutually satisfactory solution to the problems that had arisen as a result of the 1982 judgement by the Corte di Cassazione, which upheld a restrictive interpretation of FAO's immunity from legal process in Italy.[327] At these meetings the representatives of the host Government expressed the view that the enactment of new legislation to protect FAO's immunity from legal process would create certain problems. Therefore a solution was suggested by that Government based principally on Italy's having become a party to the Convention on the Privileges and Immunities of the Specialized Agencies in 1985 following its withdrawal of reservations made in 1952. Italy had not previously been considered a party to the Convention since the reservations, one of which sought to limit the immunity from legal process of the specialized agencies to that accorded to foreign States, had not been accepted by the specialized agencies.

The proposed solution took into account, in particular, sections 4 and 31 (*a*) of the Convention. Section 4 provides, in the same terms as section 16 of the Headquarters Agreement, that the specialized agencies "shall enjoy immunity from every form of legal process" except in so far as they have waived their immunity. Section 31 (*a*) provides that each specialized agency shall make provision for appropriate modes of settlement of "disputes arising out of contracts or other disputes of private character to which the specialized agency is a party".

The obligation contained in section 31 (*a*) is the natural corollary to the immunity from legal process contained in section 4; if an organization does not waive its immunity, it is bound to ensure that such immunity does not lead to a denial of justice. Since such a provision does not exist in the Headquarters Agreement, the applicability of the Convention on the Privileges and Immunities of the Specialized Agencies to FAO lays down an express treaty obligation for the Organization, whereas previously such an obligation had been recognized merely on the basis of FAO's consistent practice.

In the light of the new situation arisen as a consequence of Italy's having become a party to the Convention on the Privileges and Immunities of the Specialized Agencies, the host Government and the Director-General entered into official correspondence setting forth in detail the way in which the Organization would implement section 31 (*a*) of the Convention. This correspondence, which is reproduced as Annex I to this contribution, (following section (*e*) (v) below), is to be published in the Italian *Gazzetta Ufficiale* and will be submitted to FAO's governing bodies for consideration with a view to their determining whether this correspondence constitutes an adequate solution to the question of FAO's immunity from legal process in Italy.

(ii) *Negotiations with respect to the interpretation and application of the Headquarters Agreement concluded between FAO and the Italian Government*

Since 1974 representatives of FAO and the Italian Government have discussed the interpretation and application of certain provisions of the Headquarters Agreement. These discussions led to an exchange of letters between the Director-General and the Italian Minister of Foreign Affairs, on 19/22 December 1986, which covers a number of issues that had been under discussion.

(iii) *Definition of new headquarters boundaries*

On 10 June 1986, the Director-General and the Permanent Representative of Italy signed an exchange of letters constituting a supplemental agreement to the Headquarters Agreement concluded in 1950. The texts of these letters, together with the revised version of annex A to the Headquarters Agreement, are appended as Annex II to this contribution. The exchange of letters now has to be approved by the Italian Parliament.

(iv) *Meeting of the Committee on Constitutional and Legal Matters*[328]

The Committee on Constitutional and Legal Matters (CCLM) held its forty-eighth session in Rome from 29 September to 1 October 1986. At this session the CCLM considered the question of the procedure for election of the Chairmen and members of the Programme and Finance Committees.

As its 89th session, held in November 1983, the Council had to elect the members of the Finance Committee in accordance with the procedures laid down in rule XXVII.3 of the General Rules of the Organization (GRO). When the Council proceeded to the second stage of the election referred to in rule XXVII.3 (*c*), there were four candidates for the three seats: two candidates from Europe, one from the South-West Pacific and one from North America. The candidates that received the largest number of votes were declared elected. They were the two candidates from the European region and the candidate from the South-West Pacific region. The question was therefore raised "whether rule XXVII.3 (*c*) (ii) should be interpreted in such a way as to make it permissible for any of the three regions not to be represented, when there was at least one candidature from each of those regions."[329] Following a discussion of this matter, the Council "welcomed the Director-General's suggestion that the CCLM examine those parts of rules XXVI and XXVII GRO that related to the election of members of the Programme and Finance Committees."[330] Accordingly, the Council "*requested* the CCLM to examine the relevant parts of rule XXVI and rule XXVII GRO and to report its findings, including the texts of possible amendments to the Rules that would clarify the question of regional representation on both Committees, to its session in November 1986".[331]

With respect to the practical implementation of rules XXVI.3 and XXVII.3 GRO during the past years, the CCLM was informed that the said Rules had not been applied by the Council as imposing a legal requirement that each region be, in all circumstances, represented on the Programme Committee or the Finance Committee. Thus in the 1977 elections to the Programme Committee the South-West Pacific region did not obtain any seat, although one candidature from that region had been presented.

The CCLM concluded that the legislative history of rules XXVI.3 and XXVII.3 as well as the practice established over almost a decade tended to show that these provisions, as drafted, did not impose, nor were they intended to impose, a legal obligation on the Council to allocate the seats in accordance with a strict principle that each region that so wished had to be represented. In any case, the rules in question could not be interpreted as clearly laying down such a principle.

The CCLM reaffirmed the desirability of maintaining a just and equitable geographic representation on the Committees and, specifically, felt that each region should be represented if it wished to be. In order to fulfil the mandate given to it by the Council, the CCLM examined the nature of the amendments to the General Rules of the Organization that might be necessary, if it were decided that the said Rules should be changed in order to guarantee the representation on the Committees of each region that presented a candidature. The CCLM noted in particular that it would not suffice to amend rules XXVI.1 and XXVII.1 or rules XXVI.3 (*c*) and XXVII.3 (*c*); in fact, the voting procedures would have to be change substantially. The CCLM finally proposed some alternative solutions. These were examined by the Council at its ninetieth session, held in Rome from 17 to 28 November 1986.

In the course of the debate, many members of the Council considered that, although the present Rules on the election of members of the Programme Committee and the Finance Committee had not always worked satisfactorily, there was nevertheless no need to amend them. They stressed that with improved

coordination just and equitable representation would be safeguarded. Other members expressed the view that in reality the extant rules did not guarantee the representation of all regions that wished to participate in the Committees. For this purpose they felt that the General Rules of the Organization should be amended. They suggested that such amendment be along the lines of alternative 3 of the CCLM's Report.[332] Still other members stated that, while preferring to leave the General Rules of the Organization unchanged, they might favour alternative 3, which should be considered in greater depth.

The Council finally decided that the CCLM should examine the implications of the third alternative proposed by the CCLM in its report and that its recommendations should be submitted to the Council, which would examine the question further at its ninety-first session, in 1987.

(v) *Amendment of statutes of the Committee on Forest Development in the Tropics*[333]

The Council of the Organization at its ninetieth session, considering the increased importance of the work of the Committee on Forest Development in the Tropics, in particular in the light of the implementation of the Tropical Forestry Action Plan, endorsed the proposal to increase the Committee's maximum membership from 45 to 60 and its minimum from 15 to 30 members.

(vi) *Amendments to the Agreement for the Establishment of a Regional Animal Production and Health Commission for Asia, the Far East and the South-West Pacific*[334]

At its ninetieth session the Council examined the amendments to the Agreement for the Establishment of a Regional Animal Production and Health Commission for Asia, the Far East and the South-West Pacific which had been adopted by the Commission at its Eleventh Session (Bangkok, 7–13 October 1986). In accordance with article XVII.3 of the Agreement, these amendments required the approval of the Council.

The Council noted that the amendments aligned the terminology used in the Agreement with decisions taken by the Conference at its twentieth session (November 1979) and decided to approve the amendments to the Agreement.

(vii) *Abolition of the Regional Commission on Farm Management for Asia and the Far East*[335]

As requested by the Council at its eighty-second session, the Seventeenth Regional Conference for Asia and the Pacific examined the various regional commissions' activities and in particular the performance of the Commission on Farm Management. The Regional Conference noted the poor attendance at the Commission, requested the secretariat to make efforts to revitalize the Commission and urged member nations to take a more active interest in the Commission's activities. It expressed the view that the Council should defer any decision on the abolition of the Commission until the Eighteenth Regional Conference had had the opportunity to examine its performance.

The Eighteenth Regional Conference noted that action had been taken to revitalize the Commission but the result could not yet be assessed because the next session of the Commission would take place only in October 1986, after the Regional Conference had met.

During the discussion by the Council at its ninetieth session, several members expressed their support for the continuation of the activities of the Commission on Farm Management in the region. The Council agreed to defer any decision regarding the abolition of the Commission until it had received a report from the Nineteenth Regional Conference for Asia and the Pacific on the performance of the Commission in the intervening period.

(viii) *Invitations to non-member States to attend FAO sessions*[336]

In accordance with paragraph B-1 of the "Statement of Principles relating to the Granting of Observer Status to Nations", the Council took note of the request made by the Union of Soviet Socialist Republics to attend as an observer the ninetieth session of the Council and approved its participation.

In accordance with paragraph B-2 of the aforementioned Statement of Principles, the Council agreed to the request of the USSR to attend as an observer the following sessions:

—Ninth session of the Indian Ocean Fishery Commission (IOFC) Committee for the Management of Indian Ocean Tuna (Colombo, Sri Lanka, 9–12 December 1986);

—Twenty-second session of the Indo-Pacific Fishery Commission (IPFC);

—Fifth session of the IPFC Standing Committee on Resource Research and Development (Darwin, Australia, 16–26 February 1987).

The Council also agreed to the Director-General's proposal to invite the German Democratic Republic and the USSR to attend as observers the second session of the Commission on Plant Genetic Resources (Rome, 16–20 March 1987).

(ix) *Promotion of intergovernmental cooperation*

Intergovernmental cooperation on a regional basis was promoted in 1986 by FAO through preparatory work on treaties designed to create a South Asian Food Security Reserve and an international organization to coordinate aquaculture centres in the Asia-Pacific region.

(x) *Status of conventions and agreements and amendments thereto for which the Director-General of FAO acts as depositary*

The following developments took place in 1986:

Liberia, Togo and Zambia became parties to the International Plant Protection Convention (IPPC), approved by the FAO Conference at its sixth session in 1951. Costa Rica, Liberia and Togo accepted the amendments to the Convention approved by the FAO Conference at its twentieth session in 1979.

Albania and Czechoslovakia accepted the Constitution of the European Commission for the Control of Foot-and-Mouth Disease, approved by the FAO Conference at its seventh session in 1953.

India and the United Kingdom accepted the amendment to paragraph (*a*), article I, of the Plant Protection Agreement for the Asia and the Pacific Region, approved at the eighty-fourth session of the FAO Council in November 1983. India also accepted the amendments to articles II, III, IV and XIV of that Agreement.

Cape Verde, Spain, the Union of Soviet Socialist Republics and the United States of America accepted the Protocol to amend the International Convention for the Conservation of Atlantic Tunas (ICCAT), adopted at a Conference of Plenipotentiaries held in Paris in 1984.

Iraq became a party to the Agreement for the Establishment of a Regional Centre on Agrarian Reform and Rural Development for the Near East (CARDNE), adopted at a Conference of Plenipotentiaries held in Rome in September 1983. The Agreement was signed by the Yemen Arab Republic.

The Democratic People's Republic of Korea, India and the Maldives became parties to the Agreement for the Establishment of the Intergovernmental Organization for Marketing Information and Technical Advisory Services for Fishery Products in the Asia and Pacific Region (INFOSFISH). The Agreement was also signed by France and Indonesia.

(xi) *International Code of Conduct on the Distribution and Use of Pesticides*

Following the unanimous adoption by the FAO Conference at its twenty-third, session (November 1985) of the International Code of Conduct on the Distribution and Use of Pesticides, as a voluntary undertaking, a number of major activities were undertaken to assist member nations to implement the Code. These included:

—Collection and computerization of baseline data on the current situation regarding the various issues addressed by the Code, in order to provide a basis for measuring future developments;

—Assistance to member nations in establishing or strengthening national pesticide registration and control schemes;

—Development of mechanisms for reporting serious breaches of the Code, as well as cases where observance of the Code had led to improved safety and efficiency in the use of pesticides.

(xii) *Agreements and arrangements with intergovernmental organizations and bodies*

In 1986 the Organization's cooperation with the following intergovernmental organizations was made the subject of a memorandum of understanding or an exchange of letters: The Arab Organization for Standardization and Metrology (ASMO); the Arab Planning Institute; the Caribbean Community Secretariat (CARICOM); the Caribbean Development Bank (CDB); the Cattle and Livestock Economic Community; the Permanent Interstate Committee for Drought Control in the Sahel.

(*b*) Activities of legal interest relating to commodities

(i) *Hard fibres*

At its twenty-first session, in October 1986, the FAO Intergovernmental Group on Hard Fibres agreed, upon recommendation by the first session of its subgroup of Sisal and Henequen Producing Countries, to maintain the indicative prices for the two major grades of African and Brazilian sisal fibre and to raise the indicative price of sisal harvest twine. The Intergovernmental Group recom-

mended that the quota system should be maintained in principle, although the global and national quotas should remain suspended. For abaca fibre, the Intergovernmental Group reconfirmed the ruling indicative price range and agreed on a warning mechanism to be instituted by FAO if and when the indicator price remained outside the agreed range for more than three weeks.

(ii) *Jute, kenaf and allied fibres*

Informal price arrangements for jute and kenaf

At its twenty-second session, in December 1986, the FAO Intergovernmental Group on Jute, Kenaf and Allied Fibres maintained the informal arrangements for jute and kenaf fibres and agreed on indicative prices for the season.

(c) Activities of legal interest relating to fisheries

(i) *Management measures recommended by the Fishery Committee for the Eastern Central Atlantic (CECAF)*

At its sixth session (Lome, Togo, 2–5 December 1985), the CECAF Subcommittee on Management of Resources within the Limits of National Jurisdiction considered measures to be taken to rationalize the fisheries for a number of stocks in the CECAF area. It advised that direct regulation of the fishing effort through a limitation of fishing capacity was more appropriate for the rational management of *national stocks* than an indirect limitation through total allowable catches (TACs). A mesh size increase was also recommended for several demersal stocks of the Gulf of Guinea. Moreover, the Subcommittee advised that the management of *shared stocks* called not only for the establishment of TACs and catch allocation schemes among the countries concerned, but a direct and concerted limitation of the fishing effort of each country.

These management directives were endorsed by the Committee at its tenth session (Puerto de la Cruz, Canary Islands, Spain, 24–27 November 1986).

(ii) *Long-term institutional arrangements for the management of tuna in the Indian Ocean*

At its ninth session (Colombo, Sir Lanka, 9–12 December 1986), the Indian Ocean Fishery Commission (IOFC) Committee for the Management of Indian Ocean Tuna noted that the existing institutional arrangements for tuna management in the Indian Ocean were satisfactory to meet current needs. Several delegations expressed their concern however, as to the adequacy of these arrangements after the termination of the ongoing field projects. Bearing in mind the time required for changing the existing structure, if needed, the Committee felt that it was time to start thinking about the various options available. The Committee, therefore, set up a small ad hoc group of nations comprising France, Japan, Seychelles, Sri Lanka and Thailand to review in detail these options and submit recommendations to its next session. In view of the growing involvement of the European Economic Community (EEC) in the tuna fishery in the Indian Ocean, it was agreed that the EEC should be invited to participate in the work of the ad hoc group in an observer capacity. The group is expected to start its work in May 1987.

(iii) *Standardization of marking system of fishing vessels*

As requested by the Committee on Fisheries at its sixteenth session, the Director-General convened an Expert Consultation on the Technical Specifications for the Marking of Fishing Vessels (Rome, 16–20 June 1986). The Consultation prepared detailed standard specifications which will be submitted to the Committee on Fisheries at its seventeenth session.

(*d*) Activities of the Joint FAO/WHO Codex Alimentarius Commission in relation with Food Law

In 1986 the membership of the Joint FAO/WHO Codex Alimentarius Commission reached 130 countries

The first session of the newly established Codex Committee on Residues of Veterinary Drugs in Foods was held in October 1986. At the session procedures were laid down for the selection of veterinary drugs for evaluation of their residues in food products. Procedures for the elaboration of recommended Codex maximum levels and their acceptance will be established at the second session, in December 1987.

An Expert Consultation on Recommended Limits for Radionuclide Contamination of Foods was convened by FAO in December 1986. This consultation recommended interim guidelines on acceptable levels of radionuclides in foods moving in trade. During its eighth session, in November 1986, the Codex Committee on General Principles discussed the need for making arrangements within the Codex system for the consideration of contamination of food by radionuclides and by other environmental contaminants. The Committee agreed to recommend to the Codex Alimentarius Commission that the Codex Committee on Food Additives should be the body to consider such contaminants.

The Committee on General Principles also discussed: (i) a paper on the acceptance of Codex Standards by groups of States to which competence was transferred by its Member States; (ii) participation of observers at Codex meetings.[337]

(*e*) Legislative matters

(i) *Activities connected with international meetings*

FAO participated in and provided contributions to the following meetings:

—FAO/WECAF/CARICOM Workshop on fisheries legislation in CARICOM Member States, Bridgetown, Barbados, 6–12 May 1986;

—Consultation among regional plant protection organizations, organized by FAO, Rome, 19–22 May 1986;

—FAO/USAID expert consultation on irrigation water charges, Rome, FAO, 22–26 September 1986;

—International symposium on additives in the agro-industry, organized by the Commission Internationale des Industries Agricoles et Alimentaires, Madrid, 15–17 October 1986;

—FAO/United Nations Centre on Transnational Corporations (UNCTC) South-West Indian Ocean Regional Training Workshop on Joint Ven-

tures and other Commercial Arrangements in Fisheries, Bagamoyo, United Republic of Tranzania, 22–31 October 1986;

—Sixth International Food Law Congress on food law and microbiological contamination, organized by the European Food Law Association (EFLA), Paris, 27–28 November 1986.

(ii) *Legislative assistance and advice in the field*

During 1986, legislative assistance and advice were given to various countries on the following topics:

a. *Agrarian law*

Burkina Faso, Comoros, Indonesia, Maldives, Morocco.

b. *National and international water legislation*

Argentina (assistance in water legislation for the Chaco Province), Ethiopia, Guyana, Morocco, Yemen, Mozambique.

c. *Livestock legislation*

Barbados, Communauté Economique des Pays des Grands Lacs (CEPGL).

d. *Plant protection legislation*

Communauté Economique des Pays des Grands Lacs (CEPGL), Djibouti (plant protection and quarantine legislation).

e. *Food and food control legislation*

Cameroon, Madagascar.

f. *Fisheries legislation*

Bahamas, Barbados, Cape Verde, CARICOM, Comoros, Equatorial Guinea, Guinea, Guyana, Haiti, Honduras, Madagascar, Mauritania, Seychelles, Solomon Islands, Subregional Commission on Fisheries (Cape Verde, Gambia, Guinea-Bissau, Mauritania, Senegal), Tonga, Zaire.

g. *Forestry legislation*

African Timber Organization, Guinea-Bissau, Côte d'Ivoire, Papua New Guinea, Sudan, Yemen

h. *Environment and wildlife legislation*

Honduras, Liberia.

(iii) *Legal assistance and advice not involving field missions*

The principal activities, performed at the request of Governments, agencies, FAO projects or technical departments during 1986 were the following:

—Assistance and advice were provided on a range of topics, including: food law (Hungary), pesticides (Papua New Guinea), food standards (Spain), meat import and export regulations (France), animal fats regulations (New Zealand), health food (Argentina), food additives (Argentina), artificial sweeteners (Zimbabwe);

—Legal advice was provided to the FAO interdepartmental working group on land use planning. This advice was oriented primarily to the development of draft guidelines intended to assist the implementation of technical projects in the field;

—Assistance was provided on forest land use legislation in the Philippines.

(iv) *Legislative research*

Research was conducted, *inter alia,* on: land reform, soil conservation, international groundwater resources, plant genetic resources, food additives coastal State requirements for foreign fishing, control of foreign fishing operations, fisheries joint ventures, land law and forestry, forestry legislation in Africa and South-East Asia, compendia of fisheries legislation.

(v) *Collection, translation and dissemination of legislative information*

FAO published, semi-annually, *Food and Agricultural Legislation.* Annotated lists of relevants laws and regulations related to food legislation are also published in the semi-annual *Food and Nutrition Review.*

ANNEX I

NOTE VERBALE NO. 006207 DATED 16 DECEMBER 1986, FROM THE ITALIAN PERMANENT REPRESENTATION TO FAO[338]

The Permanent Diplomatic Representation of Italy presents its compliments to the Food and Agriculture Organization of the United Nations and has the honour to communicate the following.

The Italian Government, acting in the spirit of the principles enunciated in articles 11 and 35 of the Italian Constitution concerning the promotion of international organizations whose aims are to ensure peace and justice among nations, deposited with the Secretary-General of the United Nations, on 30 August 1985, the instrument of accession by Italy to the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the United Nations General Assembly on 21 November 1947.

In accordance with article XI, section 43 of the said Convention, the Italian Government has indicated the agencies to which it intends to apply the provisions of the Convention. FAO is expressly included among such agencies.

The foregoing was published in the *Official Gazette of the Italian Republic* No. 275 of 22 November 1985. The Italian Government wishes to inform the Food and Agriculture Organization of the United Nations thereof, in view of the applicability of the said Convention to relations between Italy and FAO, in accordance with article XVII, section 34 (*b*), of the Headquarters Agreement signed at Washington on 31 October 1950 and ratified by Italy by Law No. 11 of 9 January 1951.

In addition, the Italian Government would appreciate being informed of the modes of settlement of disputes adopted by the Organization in accordance with article IX, section 31 (*a*), of the Convention on the Privileges and Immunities of the Specialized Agencies.

LETTER FROM THE DIRECTOR-GENERAL OF FAO TO THE PERMANENT REPRESENTATIVE OF ITALY DATED 19 DECEMBER 1986[338]

I refer to Note verbale No. 6207 of 16 December 1986, by which the Permanent Diplomatic Representation to FAO communicated that the Italian Government, acting in the spirit of the principles enunciated in articles 11 and 35 of the Italian Constitution concerning the promotion of international organizations whose aims are to ensure peace and justice among nations, had deposited on 30 August 1985 the instrument of accession by Italy to the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the United Nations General Assembly on 21 November 1947.

FAO noted with satisfaction that accession by Italy to the said Convention took place following the withdrawal of certain reservations to the Convention which had previously been presented by Italy to the Secretary-General of the United Nations.

In addition, taking into account the provisions of article XVII, Section 34 (*b*), of the Headquarters Agreement, concerning the relationship between the said Agreement and the Convention on the Privileges and Immunities of the Specialized Agencies, FAO wishes to point out that its immunity from legal process is now accorded not only by article VIII,

section 16, of the Headquarters Agreement, but also by article III, section 4, of the Convention on the Privileges and Immunities of the Specialized Agencies. On the basis of the said provisions, FAO enjoys immunity from every form of legal process, except in cases where it has expressly waived such immunity.

In this connection, FAO wishes to communicate that, in accordance with the obligation deriving from article IX, section 31 (*a*), of the Convention on the Privileges and Immunities of the Specialized Agencies, it has provided for appropriate modes of settlement of disputes arising out of contracts and other disputes of private character, as shown in the documents attached to the present letter.

FAO considers that in this way it has given full and complete effect to the obligations provided for in article IX, section 31 (*a*), of the above-mentioned Convention.

NOTE ON MODES OF SETTLEMENT OF DISPUTES[338]

Modes of settlement of disputes arising out of contracts or other disputes of private character, adopted by the Food and Agriculture Organization of the United Nations

Considering that:

—Section 4 of the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations on 21 November 1947, provides that the said agencies shall enjoy immunity from every form of legal process, except in so far as in any particular case they have expressly waived their immunity;

—Section 16 of article VIII of the Headquarters Agreement between Italy and FAO, signed at Washington on 31 October 1950 and approved by the Italian Parliament in Law No. 11 of 9 January 1951, provides that the Organization shall enjoy immunity from legal process in Italy, except in so far as in any particular case FAO shall have expressly waived it;

—Furthermore, section 31 (*a*) of article IX of the Convention on the Privileges and Immunities of the Specialized Agencies expressly lays down the obligation for the said agencies to make provision for "appropriate modes" of settlement of disputes arising out of contracts or other disputes of private character to which the agencies may be parties;

FAO, in accordance with its established practice, has undertaken to set up procedures safeguarding the fundamental principles on which judicial proceedings are based both under national legal systems and international law. Such principles include: the independence and impartiality of those charged with adjudicating the dispute, the right of defence, the right of both parties to state their cases, and the practicality of the proceedings and the possibility of having recourse to them at reasonable cost. The modes of settlement actually adopted by FAO are indicated hereinafter.

Labour disputes

None of the institutional purposes of FAO could be achieved if the Organization were not to have its own staff. The employment relationship of such staff is governed exclusively by the Staff Regulations approved by the FAO Conference or Council, as well as by other rules issued by the Director-General.

With respect to the settlement of possible disputes arising out of such employment relationships, the FAO Conference decided—by resolution No. 71 adopted at its seventh session (1953)—that the Organization should accept the jurisdiction of the Administrative Tribunal of the International Labour Organisation, having its seat in Geneva, for the purpose of hearing complaints of FAO staff members concerning the alleged non-observance of their terms and conditions of appointment, as well as the jurisdiction of the United Nations Administrative Tribunal, having its seat in New York, for the purpose of hearing complaints of FAO staff members concerning their pension entitlements.

In practice, full effect has been given to the above-mentioned decision of the FAO Conference and, therefore, FAO staff members may—after having exhausted the internal

appeals procedure—lodge complaints with the independent tribunals referred to above, whose decisions are always fully implemented by FAO.

Disputes arising out of contracts

In order to achieve its institutional purposes FAO must necessarily conclude, and frequently does conclude, not only agreements of an international character with other subjects of international law (States or other organizations), but also agreements of a contractual nature with subjects of private law (e.g., for the purchase of food products, fertilizers or equipment; for the transportation of such goods; for the lease of premises to be used as offices or warehouses; for the supply of various services).

With respect to possible disputes concerning the interpretation or application of contracts, FAO has undertaken to insert in each contract an arbitration clause freely accepted by the other contracting party.

Such an arbitration clause provides that the arbitral proceedings will take place in accordance with the Rules issued by the International Chamber of Commerce, having its seat in Paris, or that they will follow the arbitration rules adopted by UNCITRAL, unless the parties agree to adopt some other form of arbitration which is more appropriate for the specific case.

Disputes concerning liability in tort

The need for FAO to oppose claims of private individuals or entities seeking redress on the basis of liability in tort very seldom arises.

In fact, first of all, the Organization protects itself, as far as possible, through appropriate insurance polices (e.g., with respect to road accidents that might be caused by FAO-owned vehicles, or accidents that might occur to visitors on FAO premises).

Secondly, the Organization is always prepared, whenever a dispute arises, to settle the matter through conciliation.

Finally, in any case—which has never arisen so far—in which all efforts at conciliation prove to be unsuccessful, the Organization undertakes to submit the dispute to arbitration, in accordance with the procedures indicated above.

LETTER TO THE DIRECTOR-GENERAL FROM THE PERMANENT REPRESENTATIVE OF ITALY DATED 22 DECEMBER 1989[338]

I refer to your letter LEG-DG/86/1736 of 19 December 1986 by which you forwarded to me an information note concerning the appropriate modes of settlement of disputes arising out of contracts and other disputes of private character adopted by FAO in accordance with article IX, section 31 (*a*), of the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations on 21 November 1947.

In this connection, I have the honour to inform you that the Italian Government recognizes, as far as it is concerned, that FAO has carried out the obligation in article IX, section 31 (*a*), of the above-mentioned Convention.

ANNEX II

I

LETTER FROM THE DIRECTOR-GENERAL OF FAO

LEG-DG/86/809 Rome, 10 June 1986

I have the honour to refer to the discussions that have taken place between representatives of the Italian Government and of this Organization, in the course of which both parties recognized the need to adapt to present requirements the complex of buildings belonging to the Italian State that forms the headquarters seat of this Organization, in order to avoid offices of the Organization being situated outside the said complex and in buildings that are not owned by the Italian State. In this context, both parties considered it necessary to extend the boundaries of the headquarters seat so as to include land and buildings destined for use by the Organization in the performance of its institutional purposes, that are not covered by the current definition of the headquarters seat.

Article 1, section 1 (*f*) (ii), of the Headquarters Agreement between the Italian Government and this Organization, signed at Washington on 31 October 1950, specifically envisages that land or buildings other than those described in annex A to the Agreement may be subsequently included in the definition of the headquarters seat by means of supplemental agreements to be concluded with the appropriate Italian authorities. In the light of article 1, section 1 (*f*) (ii), and the discussion referred to above, I now have the honour to propose that the land and buildings described in the appendix to this letter, which reflects the modifications to be carried out on the conditions and within the time-limits specified in the authorizations issued by the competent Italian authorities, be included in the headquarters seat of the Organization.

In the light of the above, I have the honour to propose, if this should be agreeable to your Government, that the present letter (the Italian version of which is attached hereto) and the reply that you may wish to send me, constitute a supplemental agreement between FAO and the Italian Government as provided for in article 1, section 1 (*f*) (ii), of the Headquarters Agreement.

The above agreement in the English and Italian languages—both texts being equally authoritative—will enter into force on the date on which the parties will have notified each other that the procedures for approval laid down in their respective rules have been fulfilled.

II

LETTER FROM THE PERMANENT REPRESENTATIVE OF ITALY TO FAO

Rome, 10 June 1986

I have the honour to refer to the letter you addressed to me today (Ref: DG/86/809), which I quote below:

[See letter I.]

In this connection, I have the honour to confirm that the Italian Government is agreeable to such a proposal. Consequently, your letter and this, my reply, constitute a supplemental agreement to the Headquarters Agreement of 31 October 1950, and will enter into force immediately the parties have notified each other that the procedures laid down in their respective rules have been fulfilled.

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3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

(*a*) International regulations

In accordance with the terms of its article 6.1, the Protocol to amend the Convention on Wetlands of International Importance especially as Waterfowl Habitat[339,340] entered into force on 1 October 1986.

(*b*) Human rights

Examination of cases and questions concerning the exercise of human rights coming within UNESCO's fields of competence

The Committee on Conventions and Recommendations met in private session at UNESCO headquarters from 28 April to 5 May and 1 to 5 September and on 19 and 24 September 1986, in order to examine communications which had been transmitted to it in accordance with decisions 104 EX/3.3 of the Executive Board.

At its spring session, the Committee examined 42 communications, of which 34 were examined with a view towards their admissibility and 8 were examined on their substance. Of the 34 communications examined as to admissibility, one was declared admissible, 2 were declared irreceivable and 6 were struck from the list since they were considered as having been settled. The examination of 33 communications was suspended. The Committee presented its report to the Executive Board at its 124th session.

At its fall session, the Committee had before it 43 communications, of which 34 were examined as to their admissibility and 9 were examined on their substance. Of the 34 communications examined as to their admissibility, none was declared admissible, 6 were declared irreceivable and 7 were struck from the list since they were considered as having been settled or did not, upon examination of the merits, appear to warrant further action. The examination of 30 communications was suspended. The Committee presented its report on its examination of these communications to the Executive Board at its 125th session.

(*c*) Copyright and neighbouring rights

(i) *Model Provisions for National Laws on Employed Authors*

Convened jointly by UNESCO and WIPO, a Committee of Governmental Experts to examine draft Model Provisions for National Laws on Employed Authors which met at Geneva from 27 to 31 January 1986 worked out alternative model provisions concerning the rights and obligations of authors and their employers in the case of works protected by copyright and created in the course of employment. The Committee was of the opinion, however, that further consideration must be given to the question.[341]

(ii) *Audiovisual works and phonograms*

Convened jointly by UNESCO and WIPO, a Committee of Governmental Experts on Audiovisual Works and Phonograms met at UNESCO headquarters from 2 to 6 June 1986 with the purpose of examining the copyright and neighbouring rights problems relating to audiovisual works and phonograms resulting from the evolution of the latest communication techniques. The Committee discussed a number of principles for regulating the matter under issue and at the end adopted a resolution concerning piracy in which it urged States to take action against it by introducing in their national laws the rights guaranteed under the international conventions in that field.[342]

(iii) *Works of architecture*

A Committee of Governmental Experts on Works of Architecture which met at Geneva from 20 to 2 October 1986, under UNESCO-WIPO joint aegis, discussed relevant copyright issues arising in connection with the works of architecture on the basis of the Memorandum on questions concerning the protection of works of architecture, submitted by the secretariats, comprising certain "Principles" which, together with comments, could afford guidance to Governments when they had to deal with those issues. The consensus of the Committee was in favour of emphasizing the usefulness of formulating such principles. There were a number of comments, however. The results of the

Committee were reported to the Executive Committee of the Bern Union and the Intergovernmental Copyright Committee of the Universal Copyright Convention.[343]

(iv) *Works of visual art*

A Committee of Governmental Experts on Works of Visual Art met at UNESCO headquarters from 16 to 19 December 1986, under the joint auspices of UNESCO and WIPO, to examine the copyright and neighbouring right problems relevant to works of visual art (which includes, in the narrow sense of the term, paintings, drawings, etchings, engravings and sculptures) in the face of new reproduction and dissemination techniques.

Deliberating on the basis of a memorandum on the subject prepared by the secretariats, the Committee generally emphasized the usefulness of devising guiding principles to national legislation in the establishment of rules for adequate protection of the owners of the rights associated with this category of works and made comments on the proposed principles, which were to be communicated to the June 1987 sessions of the Executive Committee of the Bern Union and the Intergovernmental Committee of the Universal Copyright Convention.[344]

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4. INTERNATIONAL CIVIL AVIATION ORGANIZATION

(*a*) Work programme of the Legal Committee of ICAO

During the 26th session of the ICAO Assembly (September–October 1986), the Legal Commission had for consideration the general work programme of the Legal Committee of ICAO as established by the Legal Committee at its 25th session in April 1983 and approved by the Council in June 1983 and amended by the Council in December 1983. The Commission had also for consideration a proposal presented to the Executive Committee under agenda item 13, "Aviation security", and referred to the Legal Commission, proposing the development of an instrument for the suppression of unlawful acts of violence at airports serving international civil aviation, and a draft resolution presented by 38 States regarding the development of such an instrument. As a result of its deliberations, the Commission agreed that the general work programme of the Legal Committee should include the items listed below in the following order of priority:

1. Development of an instrument for the suppression of unlawful acts of violence at airports serving international civil aviation.

2. United Nations Convention on the Law of the Sea—implications, if any, for the application of the Chicago Convention, its annexes and other international air law instruments.

3. Liability of air traffic control agencies.

4. Study of the instruments of the Warsaw System.

5. Preparation of a draft instrument on the interception of civil aircraft.

The Assembly adopted the recommendations and decisions made by the Legal Commission regarding the work programme of the Legal Committee and adopted resolution A26-4 which in its last two resolving clauses "*calls upon* the Council to include the subject of such draft instrument in the work programme of the Legal Committee as the subject of highest priority"; and "*calls upon* the Council to convene as early as possible in the first half of 1987 a meeting of the Legal Committee to prepare a draft instrument for the suppression of unlawful acts of violence at airports serving international civil aviation with a view to adoption of the instrument at a diplomatic conference as soon as practicable, preferably before the end of the 1987 calendar year, in accordance with the ICAO procedures set forth in Assembly resolution A7-6".

To implement the decision of the Assembly, the Chairman of the Legal Committee established a special Subcommittee to consider the item "Development of an instrument for the suppression of unlawful acts of violence at airports serving international civil aviation" on the basis of the Report of the Rapporteur who was appointed by the Chairman of the Legal Committee. During its 119th session, in November 1986, the Council approved the general work programme of the Legal Committee and decided to convene the session of the special Subcommittee of the Legal Committee at Montreal from 20 to 30 January 1987 and the 26th session of the Legal Committee from 28 April to 13 May 1987.

The Assembly reconfirmed the decision of the 23rd session of the Assembly that only problems of sufficient magnitude and practical importance requiring urgent international action should be included in the work programme in the legal field.

The Assembly decided that the Secretary-General should continue to monitor the work of the United Nations Committee on the Peaceful Uses of Outer Space (COPUOS) and should bring to the attention of the Council appropriate subjects requiring study by the Legal Committee without duplicating the work of COPUOS.

(*b*) Other resolutions adopted by the 26th session of the ICAO Assembly which are of legal significance

(i) *Resolution A26-2: Ratification of ICAO international instruments*

This resolution urges all Contracting States which have not yet done so to ratify the Protocols of Amendment to the Convention on International Civil Aviation (in particular those introducing articles 3 *bis* and 83 *bis* as well as the new Final Clause) and of the private law and other legal instruments which have been developed and adopted under the auspices of ICAO.

The Assembly directs the Secretary-General to take all practical steps within the Organization's means and, if possible, in cooperation with States which have previously ratified, to provide for Contracting States such assistance by way of examples of laws and other advice as they may require for the ratification of those Protocols and other instruments.

(ii) *Resolution A26-3: Convention on the Privileges and Immunities of the Specialized Agencies*

In this resolution the Assembly urges all Contracting States which have not done so to take steps to become parties to the Convention on the Privileges and

Immunities of the Specialized Agencies and, furthermore, urges all Contracting States to take such measures as are within their powers to apply the principles of the said Convention.

(iii) *Resolution A26-7: Consolidated statement of continuing ICAO policies related to the safeguarding of international civil aviation against acts of unlawful interference*

The purpose of this resolution is to facilitate the implementation of all relevant Assembly resolutions on aviation security by making their texts more readily available, understandable and logically organized, and to ensure that such a consolidated statement remains up to date and reflects the policies of the Organization as they exist at the end of each regular Assembly session.

(iv) *Resolution A26-12: The role of ICAO in the suppression of illicit transport of narcotic drugs by air*

This resolution, *inter alia*, urges the Council to continue expeditiously its efforts to explore ICAO's possible role in the suppression of illicit transport of narcotic drugs by air and calls upon Contracting States to assist airlines to adopt effective means to prevent their aircraft, equipment and facilities from being used for drug trafficking purposes. ICAO's member States have been requested to report to ICAO any measures they have taken or intend to take to counter the movement of illicit drugs by air.

(*c*) Interception of civil aircraft—Amendment 27 to Annex 2

On 10 March 1986, the Council of ICAO adopted Amendment 27 to Annex 2—Rules of the Air—to the Convention on International Civil Aviation. This amendment is a landmark in the quasi-legislative work of the Council of ICAO since for the first time a comprehensive set of standards was adopted relating to the identification and interception of civil aircraft. Additionally, the Amendment includes a comprehensive set of "Special Recommendations" on interception of civil aircraft which have no legally binding force, but States have been invited by the Council to notify any departure from these "Special Recommendations". It is believed that a large degree of uniformity has been introduced for interception procedures and that the safety of international civil aviation will be enhanced.

(*d*) Model clause on aviation security for bilateral air agreements

On 25 June 1986, the Council adopted a resolution urging all Contracting States to insert into their bilateral agreements on air services a clause on aviation security. This clause is intended only for guidance of States and in no way limits their contractual freedom to expand or limit its scope or to use a different approach. The Council recommends that Contracting States take into account the text of that *model clause on aviation security,* which reads as follows:

"*Article 'X'*

"(*a*) Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties

shall in particular act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970, and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.

"*Note:* the provision of the second sentence would be applicable only if the States concerned are parties to those Conventions.

"(*b*) The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.

"(*c*) The Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention on International Civil Aviation to the extent that such security provisions are applicable to the Parties; they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions.

"(*d*) Each Contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph (*c*) above required by the other Contracting Party for entry into, departure from, or while within, the territory of that other Contracting Party. Each Contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

"(*e*) When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof."

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5. WORLD HEALTH ORGANIZATION

(*a*) Constitutional and legal developments

The amendment to article 74 of the Constitution, adopted in 1978 by the thirty-first World Health Assembly to include an Arabic version among the authentic texts, was accepted by one further member, bringing the total number of acceptances to 31.

On 12 May 1986, the thirty-ninth World Health Assembly adopted amendments to articles 24 and 25 of the Constitution to increase the membership of the

Executive Board from 31 to 32. Those amendments will enter into force upon the deposit of instruments of acceptance by two thirds of the member States. In 1986 seven such instruments were deposited.

(*b*) Health legislation

As in previous years, four issues of the *International Digest of Health Legislation,* and its French-language counterpart, the *Recueil International de Législation Sanitaire,* were published. This journal continues to report on significant national and international legal instruments in the health and environmental protection fields. Its "News and Views" section includes signed contributions on the background to important legislative developments, as well as authoritative reports and commentaries on significant conferences, meetings and other events of international interest. More than 200 books are covered annually in the journal's "Book Reviews" and "In the Literature" sections. WHO's Health Legislation Unit seeks to act as a global clearing-house on relevant information in all fields of health legislation.

From time to time, in-depth reviews and analyses covering specific areas of health legislation are published under the rubric "Current problems in health legislation". One appeared in 1986, viz., a round table devoted to legislation for the control of smoking, with the lead contribution by Professor Ruth Roemer, Adjunct Professor of Health Law at the UCLA School of Public Health in Los Angeles, and President (for 1986–1987) of the American Public Health Association. WHO also published *The Law and the Treatment of Drug- and Alcohol-dependent Persons: A Comparative Study of Existing Legislation* (by L. Porter, A. E. Arif and W. J. Curran); guiding principles for legislation in this field are in active preparation, and are scheduled to be published in 1987 as a supplement to the *International Digest of Health Legislation.*

WHO continues to engage in active cooperation with its member States, at their request, in this field. A National Workshop on Health Legislation, supported by WHO, was held at Hangzhou, China, from 14 to 26 April 1986. A French-language International Course on Health Legislation was held at Montpellier, France, from 25 August to 5 September 1986, under the auspices of the Copenhagen-based WHO Regional Office for Europe.

WHO is also continuing to cooperate with member States in the strengthening of national capacities in the field of health legislation, and consultant missions were undertaken to a number of developing countries. The task of such consultants (of whom an informal roster is maintained at headquarters in Geneva) generally consists of reviewing, in conjunction with national counterparts, existing legislation and proposing reforms, tailored to the national context, that may be required to align legislation with health policies guided by the principles of social equity and justice in health care.

WHO's information transfer activities in this field include a computerized system for the notification of significant new legislation in the European region, a system that has been designed to meet the special requirements of WHO's member States in that region. The system is operated by the Regional Office.

6. WORLD BANK

(a) Valuation of capital

For the first time since 1964, the Executive Directors of the Bank made use of their powers under article IX of the Bank's Articles of Agreement to give formal authoritative interpretations of the Bank's Articles of Agreement. The provisions interpreted were those concerning the valuation of the Bank's capital stock, and related provisions.

The Bank's Articles of Agreement define the capital stock of the Bank in terms "United States dollar of the weight and fineness in effect on 1 July 1944" (the 1944 dollar). The standard of value is relevant to several important aspects of the rights and obligations of the Bank and its members under the Articles of Agreement. It is the unit in which the price of shares is expressed. It is also the unit which governs the calculation of maintenance-of-value payments to be made with respect to the local currency portions of subscriptions in certain circumstances. In addition, the standard of value has a bearing on the scale of the overall operations of the Bank as the total amount outstanding of the Bank's guarantees, participations in loans and direct loans may not exceed an amount equal to its subscribed capital, reserves and surplus (the "lending limit" of the Bank).

On 1 April 1978, as a result of the coming into force of the Second Amendment to the Articles of Agreement of the International Monetary Fund and the concurrent repeal of the United States legislation which established a link between the current United States dollar and gold, the Special Drawing Right (SDR) replaced gold as the unit of value of currencies in the Fund's Articles of Agreement, and the basis for converting 1944 dollars into current United States dollars or any other currency ceased to exist.[345]

As the Articles of Agreement of the Bank were neither amended nor formally interpreted to resolve the matter at that time, the Executive Directors of the Bank decided, by way of interim measures, that (i) the Bank would, to an appropriate extent, make use of the SDR as its unit of account; and (ii) in the meantime, subscriptions would be accepted at 1.20635 current United States dollars (i.e., the last official par value of the United States dollar) for one 1944 dollar, subject to the possibility that adjustment would be required when the standard of value issue was settled. Also, maintenance-of-value settlements were suspended in 1978, pending resolution of the issue.

In September 1983 the Executive Directors of the Bank established an Ad Hoc Committee on the Valuation of Bank Capital, consisting of seven Executive Directors, to analyse the implications of alternative solutions to the valuation of the Bank's capital with a view to facilitating an agreed solution.

In July 1986 the Ad Hoc Committee recommended that the Executive Directors interpret the reference to the 1944 dollar in the Articles of Agreement of the Bank to mean the SDR as the SDR was valued in terms of United States dollars immediately before the introduction of the basket method of valuing the SDR on 1 July 1974 (i.e., $1.20635 per SDR). On 14 October 1986 the Executive Directors of the Bank accepted this recommendation and adopted the decision reproduced below.

DECISION OF THE EXECUTIVE DIRECTORS UNDER ARTICLE IX OF THE ARTICLES OF AGREEMENT REGARDING ARTICLE II, SECTION 2 (*a*) AND SECTION 9 (*a*), OF THE ARTICLES OF AGREEMENT

(Valuation of the Bank's capital and related issues)

Whereas article II, section 2 (*a*), of the Articles of Agreement of the Bank defines the Bank's authorized capital in terms of United States dollars of the weight and fineness in effect on 1 July 1944;

Whereas on 1 April 1978, as a result of the coming into effect of the Second Amendment of the Articles of Agreement of the International Monetary Fund (the Fund) and the concurrent repeal of section 2 of the Par Value Modification Act of the United States (31 U.S.C. 449), the pre-existing basis for translating the term "United States dollars of the weight and fineness in effect on 1 July 1944" (the 1944 dollar) into any currency was abolished;

Whereas the General Counsel of the Bank has rendered a legal opinion concluding in substance that, in the exercise of their statutory powers of interpretation, the Executive Directors may interpret references in the Articles to the 1944 dollar to mean either references to the last official value of the 1944 dollar in terms of current United States dollars (that is, $1.20635) or references to the Special Drawing Right established by the Fund;

Whereas, pending a resolution of this issue, the Executive Directors adopted certain interim measures concerning the valuation of the Bank's capital stock and the payment of shares on subscription by members;

Whereas the Ad Hoc Committee on the Valuation of Bank Capital established by the Executive Directors on 13 September 1983 has recommended in its report dated 23 July 1986 that the Executive Directors resolve the issue by interpreting article II, section 2 (*a*) and section 9 (*a*), and reaching related decisions as hereinunder set forth;

Whereas article IX of the Articles of Agreement authorizes the Executive Directors to interpret the Articles of Agreement as hereinunder set forth;

Whereas the Executive Directors regard the existence of a common standard of value as inherent in the Articles of Agreement which cannot be abolished without amending the Articles of Agreement;

Now therefore the Executive Directors, with effect starting on 30 June 1987 and until such time as the relevant provisions of the Articles of Agreement are amended:

1. Decide the question of interpretation in accordance with article IX of the Articles of Agreement of the Bank, by reading the words "United States dollars of the weight and fineness in effect on 1 July 1944" in article II, section 2 (*a*), of the Articles of Agreement of the Bank to mean the Special Drawing Right (SDR) introduced by the Fund, as the SDR was valued in terms of United States dollars immediately before the introduction of the basket method of valuing the SDR on 1 July 1974, such value being 1.20635 United States dollars for one SDR.

2. Concurrently with the above interpretation, and as an integral part of the resolution of the issue of the valuation of the Bank's capital stock, decide:

(*a*) That capital payment obligations under article II, sections 5, 7 and 8, of the Articles of Agreement shall be determined in accordance with

the value of the SDR in terms of United States dollars as stated in paragraph 1, above;

(*b*) In order to avoid negative effects on the Bank's capital in case the SDR substantially appreciates *vis-à-vis* the United States dollar, to review the adequacy of the Bank's capital every three years, or at any time in the intervening periods when in their judgement such a review becomes warranted, with a view to recommending to the Board of Governors appropriate measures required to restore its value;

(*c*) To resume maintenance-of-value payments to the Bank on the basis of the provisions of article II, section 9, of the Articles of Agreement regarding significant changes in the foreign exchange value of members' currencies measured against the standard of value of the Bank's capital established in paragraph 1 above;

(*d*) To adopt a policy under which the Bank will make maintenance-of-value payments to members whose currency has significantly appreciated;

(*e*) To establish maintenance-of-value positions with respect to the local currency portion of all capital subscriptions (except such local currency as shall have been repurchased pursuant to the provisions of article II, section 9 (*a*), of the Articles of Agreement), as of 30 June 1987 and every 30 June thereafter, and to implement maintenance-of-value settlements in accordance with the Annex* to this decision;

(*f*) To express the value of the capital stock of the Bank on the basis of the unit of value referred to in paragraph 1 above, for purposes of the Bank's financial statements.

(*b*) Multilateral Investment Guarantee Agency

During 1986, the Bank continued its preparations for the launching of the Multilateral Investment Guarantee Agency (MIGA), an international investment guarantee and promotion agency which will undertake a wide range of guarantee operations as well as consultative and advisory activities.[346] The Convention establishing MIGA[347] will enter into force upon its ratification by 5 industrial and 15 developing countries provided that the subscriptions total at least one third of MIGA's initial authorized capital.

The 11 October 1985 resolution of the Bank's Board of Governors opening the Convention for signature[348] also provided that once the Convention had been signed by the minimum number of countries whose ratifications were required for entry into force, the President of the Bank would convene a Preparatory Committee to prepare, for the eventual consideration of MIGA's governing bodies, the draft by-laws, rules and regulations required for the initiation of MIGA's operations.

By 18 June 1986, the Convention had been signed by the required number of countries, and the President called the meeting of the Preparatory Committee.

Drafts drawn up by the Bank's Legal Department formed the basis of the Preparatory Committee's work when it met in Washington, D.C., from 15 to 19 September 1986. These included draft by-laws covering such diverse topics as

*Not reproduced.

meetings of MIGA's Council of Governors and the terms of service of its Directors and President, draft rules of procedure for meetings of MIGA's Board of Directors, draft financial regulations of MIGA and a detailed set of draft operational regulations for MIGA's guarantee operations and consultative and advisory activities.

Representatives of 42 countries attended the Committee's sessions, which were chaired by the Bank's Vice-President and General Counsel. Following some revisions, the Committee adopted the drafts by consensus. The draft by-laws will be submitted to MIGA's Council of Governors after the Convention enters into force, while the remaining rules and regulations will be considered by MIGA's Board of Directors.

Since the meeting of the Preparatory Committee, further signatures of the MIGA Convention have taken place. As of 31 December 1986, the Convention had been signed by 11 industrial countries and 40 developing countries. Seven of the 51 signatory countries had also ratified the Convention.

(*c*) International Centre for Settlement of Investment Disputes

(i) *Signatory States and Contracting States*

During 1986, Ecuador, Belize, Honduras and Hungary signed the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention).[349] With these signatures, the total number of signatory States reached 96. Ecuador also ratified the ICSID Convention in 1986, bringing to 88 the total number of Contracting States.[350]

(ii) *Disputes before the Centre*

On 24 September 1986, the Secretary-General registered a request for arbitration in *Dr. Ghaith R. Pharaon v. Republic of Tunisia* (case ARB/86/1).

Arbitral awards were rendered on 31 March 1986 in *Liberian Eastern Timber Corporation (Letco) v. Government of the Republic of Liberia* (case ARB/83/2) and on 21 April 1986 in *Atlantic Triton Company Limited v. Republic of Guinea* (case ARB/85/1).

In 1985, an Ad Hoc Committee was constituted in accordance with article 52 of the ICSID Convention to consider an application to annul the award rendered by the arbitral tribunal in the case of *Amco Asia Corporation et al. v. Republic of Indonesia* (case ARB/81/1). On 16 May 1986, the Ad Hoc Committee issued a decision annulling the award.

As of 31 December 1986, six proceedings were pending before the Centre. These included the *Pharaon* case, mentioned above, and the following five further arbitrations:

(*a*) *Klöchmer/Cameroon* (resubmission) (case ARB/81/2);

(*b*) *Société Ouest Africaine des Bétons Industriels (SOABI) v. State of Senegal* (case ARB/82/1);

(*c*) *Colt Industries Operating Corp., Firearms Division, v. Government of the Republic of Korea* (case ARB/84/2);

(*d*) *SPP (Middle East) Limited v. Arab Republic of Egypt* (case ARB/84/3);

(*e*) *Maritime International Nominees Establishment (MINE) v. Government of the Republic of Guinea* (case ARB/84/4).

(iii) *ICSID and the courts*

Five decisions relating to ICSID arbitration were rendered by national courts during 1986.

Three of these concern the relationship of ICSID arbitration to other remedies. Article 26 of the ICSID Convention provides that, unless otherwise stated, consent to ICSID arbitration shall be deemed to be consent to such arbitration to the exclusion of other remedies. The first recent decision was that of the Tribunal of First Instance of Geneva in *Maritime International Nominees Establishment (MINE) v. Republic of Guinea,* which dealt with a request by MINE for the enforcement of an American Arbitration Association (AAA) award that MINE had obtained against Guinea before instituting ICSID arbitral proceedings. In its decision, dated 13 March 1986, the Geneva Tribunal rejected MINE's request which it termed "contrary to the exclusive nature of ICSID arbitration as provided in article 26" of the ICSID Convention.[351]

This decision was followed on 7 October 1986 by one involving the same parties in which the Geneva Autorité de Surveillance des Offices de Poursuite pour Dettes et de Faillite ordered the lifting of an attachment which MINE had gained on the basis of the AAA award on certain Guinean assets in Switzerland. In so doing, the Geneva Autorité referred to article 26 and stated "that in having recourse to the ICSID arbitral procedure, MINE waived the right to seek provisional measures in our country against the Republic of Guinea."[352]

On 18 November 1986, the French Cour de cassation issued a decision quashing a 1984 judgement of the Cour d'appel of Rennes in *Atlantic Triton v. Republic of Guinea.* The latter court had vacated an attachment of Guinean assets obtained by Atlantic Triton on the ground that article 26 of the ICSID Convention precluded courts in Contracting States from entertaining claims brought before them by parties to ICSID arbitrations.[353] The Cour de cassation disagreed, holding in its decision that the ICSID Convention does not prohibit the parties from asking national courts to order provisional measures "aimed at guaranteeing the execution of the future award."[354]

The two other recent national court decisions relate to the recognition and enforcement of the ICSID arbitral award rendered on 31 March 1986 in favour of the claimant in *Liberian Eastern Timber Corporation (Letco) v. Republic of Liberia.* In a 5 September 1986 *ex parte* decision, the United States District Court for the Southern District of New York granted Letco's application for the award's enforcement. On the strength of that decision, executions were issued on Liberian assets in the United States which, in a decision dated 12 December 1986, the same United States court found to be sovereign rather than commercial assets. They were thus immune from execution under the 1976 United States Foreign Sovereign Immunities Act. Since the ICSID Convention does not derogate from the law of any Contracting State relating to sovereign immunity from execution,[355] the Court granted Liberia's motion to vacate the executions on those assets.[356]

7. INTERNATIONAL MONETARY FUND

MEMBERSHIP

During the year ended 31 December 1986, the membership of the Fund increased from 149 to 151; Kiribati and Poland became members on 3 June 1986 and 12 June 1986, respectively, increasing the total of members' quotas in the Fund to SDR 89,987.6 million. All of the 151 members are participants in the SDR Department.

STRUCTURAL ADJUSTMENT FACILITY

The Executive Board established the Structural Adjustment Facility (SAF) in March 1986, a new lending facility within the Fund's Special Disbursement Account. The purpose of the Facility is to provide balance-of-payments assistance in the form of loans to eligible low-income members (those eligible for IDA resources) that present medium-term macroeconomic and structural adjustment programmes intended to overcome protracted balance-of-payments problems and foster growth.

With the anticipated addition in early 1987 of Kiribati and Tonga to the list of eligible members, 62 countries will then be eligible for SAF assistance. However, the two largest eligible members, China and India, have indicated that they do not intend to avail themselves of the Facility, thus enlarging the amount available to other eligible members.

The initial resources available to the Facility are derived from repayments of Trust Fund loans (about SDR 2.7 billion). In addition, it is expected that recourse to the Facility will serve as a catalyst for other flows of financial resources to members.

An eligible member seeking to use resources of the Facility develops a three-year policy framework paper describing the member's medium-term objectives and the main outlines of the policies to be followed in pursuing these objectives. This medium-term policy framework, which is developed in collaboration with the staff of the Fund and the World Bank, presents a three-year adjustment programme, including structural measures and the expected path of macroeconomic policies. The policy framework contains an assessment of the country's financing needs and possible sources of finance to support comprehensive economic programmes, including indicative levels of financing from the SAF and the World Bank group.

Upon approval by the Fund of a three-year arrangement in support of a member's structural adjustment programme, the member has a commitment of resources to be made available in the form of loans under three annual arrangements. These loans are available for disbursement upon the approval of each annual arrangement.

Interest is charged at the rate of one half of one per cent per annum on outstanding balances, payable semi-annually, and repayment of each loan under the SAF will be made in 10 equal semi-annual instalments starting 5½ years and finishing 10 years after the date of the disbursement. As of 31 December 1986, nine members had received disbursements under the policy.

POLICY ON ENLARGED ACCESS

The Executive Board of the Fund completed its review of the policy on enlarged access and decided in December 1986 to extend the policy for 1987, during which members' access limits will be kept unchanged at 1986 levels.

Under this decision, during 1987 access by members to the Fund's general resources under approved arrangements will continue to be subject to annual limits of 90 or 110 per cent of quota, three-year limits of 270 or 330 per cent of quota, and cumulative limits, net of scheduled repurchases, of 400 or 440 per cent of quota, depending on the seriousness of the member's balance-of-payments needs and the strength of its adjustment efforts.

The annual and triennial access limits are not regarded as targets. Within these limits, the amount of access in individual cases will vary according to the circumstances of the member. Also, the Fund can approve stand-by and extended arrangements that provide for amounts in excess of these access limits in exceptional circumstances.

The Fund has also decided that, after 31 December 1986, the proportions of ordinary and borrowed resources to be used under stand-by or extended arrangements approved in accordance with the decision on the Policy of Enlarged Access will be as follows: (*a*) under a stand-by arrangement, purchases will be made with ordinary and borrowed resources in the ratio of 2 to 1 in the first credit tranche, and 1 to 2 in the next three credit tranches. Thereafter, purchases will be made with borrowed resources only; (*b*) under an extended arrangement, purchases will be made with ordinary and borrowed resources in the ratio of 1 to 2 until the outstanding use of the upper credit tranches and the extended Fund facility equals 140 per cent of quota, and thereafter, purchases will be made with borrowed resources only.

Compensatory financing of export fluctuations and buffer stock financing facility

The Executive Board also decided to retain, at 83 per cent of quota, the limit on amounts members may draw either in respect of shortfalls in receipts from exports or in respect of excesses in the cost of cereal imports. For members making use of compensatory financing for both export shortfalls and excesses in cereal imports, the overall limit of 105 per cent of quota has also been maintained.

Furthermore, the Executive Board decided to maintain the maximum access limit at 45 per cent of quota under the buffer stock financing facility.

These limits and the enlarged access policy itself will be reviewed before the end of 1987.

SDRs

The Executive Board of the Fund prescribed in June 1986 the African Development Bank, and its affiliate, the African Development Fund, as holders of SDRs.

This brings to 16 the number of official institutions, in addition to the Fund and its 151 members, authorized to hold and deal in SDRs. Each of these holders can acquire and use SDRs in transactions and operations with any other prescribed holder and with any of the Fund's members, and has the same degree of freedom as Fund members to buy and sell SDRs both spot and forward, and to receive or use SDRs in loans, pledges, swaps, donations and settlement of financial obligations.

Principles of "burden sharing"

The Executive Board adopted in July 1986 the principles of burden sharing, whereby the financial consequences for the Fund which stem from the existence

of overdue financial obligations shall be shared between debtor and creditor member countries; in principle, this sharing shall be applied in a simultaneous and symmetrical fashion.

Charges

The Executive Board decided in October 1986 that, effective 1 November 1986, accrued charges on the use of the Fund's general resources from a member that is overdue in meeting any financial obligation to the Fund for six months or more will not be included in accrued income unless the member is current in the payment of charges. Such charges will instead be reported as deferred income, and will be recorded as income only when paid. Once charges from a member have been reported as deferred income, charges subsequently accrued will not be included in accrued income until the member becomes current in the payment of charges.

Borrowing agreement with Japan

In December 1986 the Executive Board approved the agreement for borrowing from the Government of Japan in an amount equivalent to SDR 3 billion. This agreement strengthens the Fund's financial position and facilitates a flexible response in accordance with the Fund's policies to assist members in their efforts to overcome balance-of-payments difficulties. The Fund may make drawings under the agreement during a period of four years, and this period may be extended for up to two years if warranted in the light of the Fund's liquidity and borrowing requirements. The final maturity of each drawing will be five years after the date of the drawing, and interest will be based on the weighted average of six-month domestic interest rates for the five currencies comprising the SDR basket.

Borrowing agreements with the Saudi Arabian Monetary Agency

The Executive Board authorized the Managing Director in December 1986 to propose to the Saudi Arabian Monetary Agency (SAMA) amendments to the 1981 Borrowing Agreement and the 1984 Supplementary Agreement between SAMA and the Fund. This proposal was accepted by SAMA and entered into force on 8 December 1986. Under these amendments, (*a*) the period during which SAMA stands committed to make loans to the Fund under the 1981 Borrowing Agreement was extended from 7 May 1987 to 6 November 1987, up to a maximum of SDR 500 million, and (*b*) the period during which SAMA stands committed to make loans to the Fund under the 1984 Supplementary Agreement was extended from 7 May 1987 to 6 May 1989. Each third tranche loan made under the 1984 Supplementary Agreement during the period 7 May 1987 to 6 May 1989 shall mature and be repaid by the Fund in a single instalment on 6 November 1989.

Supplementary Financing Facility Subsidy Account

The Executive Board decided in December 1986 that subsidy payments shall be made, in accordance with the Instrument establishing the Supplementary Financing Facility Subsidy Account, with respect to charges paid on holdings of currency referred to in section 7 of the Instrument for the period 1 July 1985 through 30 June 1986 to each eligible member on 23 December 1986, or as soon thereafter as the member had paid all overdue charges, if any, on balances eligible for the subsidy. Since 15 January 1986, subsidy payments have been made at the Fund's discretion, in SDRs and United States dollars, and the World

Bank has been designated as one of the two recipients of investments from the Subsidy Account.

ENHANCED SURVEILLANCE

On 12 March 1986 the Executive Board authorized members having consultation discussions with the Fund under its policy on enhanced surveillance to transmit copies of the staff reports on those consultations to creditor financial institutions under appropriate safeguards.

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8. UNIVERSAL POSTAL UNION

UPU has continued the study of the legal and administrative problems entrusted to the Executive Council by the 1984 Hamburg Congress. Among the more important problems likely to be of interest to other organizations, mention should be made in particular of the following studies:

(a) *Contacts with international organizations representing customers of the postal services*

This is principally a matter of regulating the modalities of such contacts (participation in symposia, in meetings of certain bodies, etc.).

(b) *Study on international postal regulations*

The object here is, first, to enhance the flexibility of procedures for the revision of Acts of the Union so that these may be adapted more rapidly to new techniques and, secondly, to confer upon the Executive Council legislative competence to review the implementation regulations.

(c) *Agreements concerning the postal financial services*

Review of some services and abolition of some others.

(d) *Credentials of delegates to Congress*

Recognition of credentials at the start of the Congress and granting the right to vote to delegations whose credentials have not been deposited or are not in good and due order.

A short commentary on these matters appeared in the 1984 *Yearbook.*

(e) *Duration of the Congress*

With a view to reducing to five weeks the duration of the Congress, which is held every five years, the Executive Council has adopted a series of practical and legislative measures. It has also issued an appeal to the various presiding officers to ensure strict observance of the rules of procedure of the Congress and punctuality of meetings.

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9. WORLD METEOROLOGICAL ORGANIZATION

(*a*) Constitutional and regulatory matters

(i) *Proposed amendment to regulation 141 of the General Regulations*

As requested by the Ninth Congress, the Executive Council reconsidered the question of the term "designated" in regulation 141 of the General Regulations. It agreed to recommend to the Tenth Congress that the term "designated" should continue to mean "elected".

Furthermore, the Council agreed to inform the Tenth Congress of its statement on the application of regulation 141 adopted by EC-XXXVI (general summary of the abridged report thereof, para. 16.3.8). In this respect, it was considered more appropriate to have the substance of this statement incorporated in rule 15 of the Rules of Procedure of the Council.

(ii) *Procedures for amending the Convention*

The Executive Council noted the information provided by the Secretary-General consisting of a compilation of all the relevant decisions taken by the Congress so far regarding the implementation and interpretation of article 28 of the WMO Convention.[357]

The Council decided that such a compilation should be made available to the Tenth Congress as useful reference material which might subsequently be annexed to the report of the session if the Congress so decided.

(iii) *Procedures for approval of amendments to the Convention by correspondence*

The Council noted with appreciation the study undertaken by the Secretary-General in response to the request made by EC-XXXVI regarding the possible procedures for voting by correspondence on amendments to the Convention.

Expressing its reaffirmation of the authority of the Congress as the supreme legislative body of the Organization, the Council decided that no further action was necessary.

(iv) *Revision of the General Regulations*

The Executive Council examined the proposals for amending certain of the General Regulations, the need for which had arisen as a result of the experience gained since the Ninth Congress in the application of these Regulations.

The Council decided to recommend to the Tenth Congress the adoption of certain amendments to the General Regulations, and requested the Secretary-General to submit these proposed amendments to the Tenth Congress.

(v) *Establishment of Working Arrangements between the Baltic Environment Protection Commission and WMO*

The Council took note of the request of the Baltic Marine Environment Protection Commission, also referred to as the Helsinki Commission, for the establishment of working arrangements with WMO.

Having considered the objectives and functions of the Helsinki Commission as well as its scientific and technological cooperation with other organiza-

tions and WMO in particular, the Council agreed that it would be in the mutual interests of both organizations to establish a close working relationship.

The Council therefore authorized the Secretary-General to enter into formal working arrangements with the Executive Secretary of the Helsinki Commission on the basis of the text approved by the session.

In this connection, the Council noted that the seventh meeting of the Helsinki Commission held in February 1986 had also expressed itself in favour of such working arrangements with WMO based on the same text.

(*b*) Staff matters

(i) *Amendments to the Staff Rules*

The Executive Council noted the amendments to the Staff Rules, applicable to secretariat staff made by the Secretary-General since the thirty-seventh session of the Council.

(*c*) Membership of the Organization

The United Arab Emirates deposited its instrument of accession on 17 December 1986. This accession therefore increases the membership of the Organization to 155 member States and five member Territories.

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10. INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT

(*a*) Effectiveness of the Second Replenishment of IFAD's resources

At its ninth session, held in January 1986, the Governing Council of IFAD unanimously adopted the resolution on the Second Replenishment of IFAD resources.[358] This resolution was adopted pursuant to article 4.3 of the Agreement establishing IFAD.[359] The desired level of the Second Replenishment was US$ 500,000,000 with Category I members'[360] contributions totalling US$ 300,000,000 and Category II members'[361] contributions totalling US $ 200,000,000. At the time of the adoption of the resolution, the pledges from Category I and II amounted to, respectively, US$ 276,000,000 and US$ 184,000,000. In order to attain the desired level of Category I pledges of US$ 300,000,000, Category I members had agreed to increase on a *pro rata* basis their individual contributions pledged at the time of the adoption of the resolution. This increase on the part of Category I members was conditional upon Category II members increasing their pledged contributions to a level of US$ 200,000,000 not later than 19 February 1986. Consequently, paragraph 3 (*b*) (ii) of the resolution provided for the deferral of the final determination of the level of contributions by Categories I and II members until 19 February 1986 after which the President of IFAD communicated to all members that the final level of contributions by Categories I and II members was US$ 276,000,000 and US$ 184,000,000, respectively.

In accordance with paragraph 6 (*a*) of the above-mentioned resolution, the Second Replenishment was to enter into effect on the date when the Instruments of Contribution relating to contributions from Categories I and II had been deposited with the Fund in the aggregate total amount equivalent to at least 50 per cent of the respective total contribution of each such category. Upon the receipt of the required number of Instruments of Contribution, the Second Replenishment was declared effective on 27 November 1986.

(*b*) Future financial basis and structure of IFAD

Resolution 37/IX on the Second Replenishment requested the President of IFAD to report on IFAD's future financial basis, through the Executive Board, to the Governing Council for necessary action. The President of IFAD invited ten high-level international experts to two meetings in March and June 1986 to assist him in reviewing the various alternative approaches for a secure long-term financial structure of IFAD. The goal of the review of IFAD's future financial basis and structure is twofold:

1. Ensuring future replenishments on a more predictable basis, acceptable to all members;
2. Making IFAD more financially self-supporting.[362]

The President submitted his report on this subject to the tenth session of the Governing Council, held in December 1986, which, *inter alia,* contained various options concerning the future financial basis and structure of IFAD (levels and modalities of contributions to the Fund, increased financial participation of Category III countries, participatory financing arrangements, special programmes, trust funds, mobilization and use of non-convertible currency contributions, borrowing from member countries and commercial banks, etc.).[363]

By its resolution 45/X, the Governing Council noted the President's report on IFAD's future financial basis and structure and set up a High Level Intergovernmental Committee (HLIC) consisting of not more than 12 members from each Category[364] to review, *inter alia,* the various proposals concerning IFAD's future financial basis and structure presented in the President's report and to submit a report to the eleventh session of the Governing Council regarding its preliminary findings. In its review the HLIC is to give priority attention to those issues which have an impact on the Third Replenishment of IFAD's resources under article 4.3 of the Agreement establishing IFAD. The resolution further states that the negotiations concerning the Third Replenishment will start not later than the first quarter of 1988 with a view to ensuring the timely completion thereof, taking into account the report of the HLIC.[365]

(*c*) Amendment to the Agreement establishing IFAD

Section 8 of article 6 of the Agreement establishing IFAD (hereinafter referred to as the Agreement) before its amendment stipulated a three-year term of office for the President of IFAD and that an incumbent could be reappointed for one additional term of office of three years upon the expiry of the first term. In fixing a three-year term, the principal consideration had been the replenishment period of the Fund. Section 3 of article 4 of the Agreement provides, *inter alia,* that "in order to assure continuity in the operations of the Fund, the Governing Council shall periodically, at such intervals as it deems appropriate, review the adequacy of the resources available to the Fund; the first such review shall take

place not later than three years after the Fund commences operations." Although the three-year interval prior to the first review of the adequacy of IFAD's resources applied only to the First Replenishment and although the possibility was left open that succeeding reviews might be at longer or shorter intervals, this did not alter the decision concerning the length of subsequent terms of office of the President.

Among the international financial institutions, IFAD provides the shortest term of office for its President. Experience in IFAD over the past eight years indicates that the present three-year term of office of the President, as provided by section 8 (*a*) of article 6 of the Agreement, has considerable drawbacks: (i) it is least conducive to effective negotiations for the replenishment of the resources of IFAD; (ii) the proper guidance and implementation of IFAD's operational policies are affected (since agricultural projects require a longer period of implementation); and (iii) continuity of management is adversely affected because a reasonable length of time is essential for the proper handling of numerous other matters related to the operation and management of IFAD.

The Governing Council, at its eighth session, appointed the second President of IFAD, Mr. Idriss Jazairy, for a term of three years as provided in the unamended section 8 (*a*) of article 6 of the Agreement. The term of office of the second President commenced on 19 November 1984, when he assumed the duties of the office, and this term was due to expire on 18 November 1987. This date was over two months before the eleventh session of the Governing Council, which the Executive Board at its twenty-eighth session decided to convene from 26 to 29 January 1988.

A number of Executive Directors, realizing the implications of the expiry of the first term of office of the President prior to the eleventh session of the Governing Council, when IFAD would be celebrating its tenth anniversary, proposed at the Board's twenty-eighth session (16–19 September 1986) that the issue be considered during that session so as to make appropriate recommendations to the Governing Council on the action to be taken by it at its tenth session. Acting on the proposal of some of its members, the twenty-eighth session of the Executive Board amended its provisional agenda to include therein the item entitled "The term of office of the President of IFAD" for its deliberation. In the course of discussions on the provisional agenda, it was stated that IFAD runs the risk of celebrating its tenth anniversary without a duly appointed President if the matter is not appropriately settled by the Governing Council at its tenth session.

As a result of the discussion during its twenty-eighth session, the Executive Board recognized a need for the most efficient management of IFAD and adopted a resolution asking the President to prepare an analytical document dealing with the term of office of the President for the consideration of the twenty-eighth session of the Executive Board in September 1986.

The Executive Board, after deliberating upon various aspects of the appointment of the President, proposed that, in order to enable the President of IFAD to discharge the responsibilities of his office in the most effective and efficient manner, recommended to the Governing Council:

(*a*) To amend section 8 (*a*) of article 6 of the Agreement in order to lengthen the original existing three-year term of office of the President to a term of office of four years;

(*b*) To add a new provision in section 8 (*b*) of article 6 of the Agreement so as to enable the Governing Council under special circumstances to extend ad hoc the statutory term of office of the President.[366]

The Governing Council at its tenth session, held from 9 to 12 December 1986, unanimously accepted the recommendation of the Executive Board and adopted the first amendment to the Agreement establishing IFAD in the form of resolution 44/X, the operative parts of which read:

"The Governing Council of IFAD decides that:

"(*a*) In section 8 (*a*) of article 6 of the Agreement establishing IFAD, as adopted by the United Nations Conference on the Establishment of an International Fund for Agricultural Development held on 13 June 1976, in Rome, the word 'three' wherever it appears in the paragraph is amended to read 'four'. The amended paragraph shall read:

" '(*a*) The Governing Council shall appoint the President by a two-thirds majority of the total number of votes. He shall be appointed for a term of four years and shall be eligible for reappointment for only one further term. The appointment of the President may be terminated by the Governing Council by a two-thirds majority of the total number of votes.';

"(*b*) The following new paragraph (*b*) shall be added in section 8 of article 6 of the Agreement establishing IFAD:

" '(*b*) Notwithstanding the restriction on the term of office of the President of four years, contained in paragraph (*a*) of this section, the Governing Council may, under special circumstances, on the recommendation of the Executive Board, extend the term of office of the President beyond the duration prescribed in paragraph (*a*) above. Any such extension shall be for no more than six months.';

"(*c*) The existing paragraphs (*b*) to (*h*) of section 8 of article 6 of the Agreement establishing IFAD shall be renumbered as (*c*) to (*i*) respectively;

"(*d*) The length of the current term of office of the incumbent President shall be governed by section 8 (*a*) of article 6 of the Agreement establishing IFAD as amended by this Resolution."

(*d*) General Conditions Applicable to Loan and Guarantee Agreements

The legally enforceable covenants between IFAD and a borrower for the financing of a project are contained in the loan agreement between the borrower and IFAD. Each loan agreement includes the financial terms and conditions of the loan and such policy, project implementation, loan administration and other covenants as are essential for the success of a project in relation to its objectives. Some of these covenants are standard provisions for each loan agreement and are contained in the General Conditions Applicable to Loan and Guarantee Agreements (the General Conditions), which are specifically incorporated by reference into each loan agreement and thus form an integral part of it. The General Conditions also prescribe and constitute the general legal framework within which a loan agreement operates and the provisions therein are related to the day-to-day administration of the loan.

On 19 September 1986, at its twenty-eighth session, the Executive Board approved a revised set of the General Conditions. The revised General Conditions were to apply to the loans to be approved by the Executive Board after 20 September 1986.[367]

In this revision, the General Conditions have been expanded to include all those standard provisions of IFAD loans that have so far been included separately in a loan, guarantee or project agreement. The inclusion of these standard provisions in the General Conditions has resulted in economy of time in the preparation of agreements and simplification of agreements, and greatly facilitates negotiations, as experience has shown that the provisions of the General Conditions are only very rarely subject to change in negotiations and then only when some exceptional reasons or circumstances require such a change.

(*e*) Cooperation with the Netherlands

At its twenty-eighth session, the Executive Board resolved to authorize the President to conclude a second participation arrangement with the Government of the Netherlands for financing selected ongoing IFAD projects.[368] This resolution authorizes the President to conclude similar participation arrangements in the future and report to the Executive Board on the progress in implementing such arrangements. Thus, IFAD and the Government of the Netherlands, through an exchange of letters dated 19 September 1986 and 23 September 1986, agreed that the Netherlands' participation would be equivalent to an aggregate amount of 25,000,000 Netherlands guilders (f.) and would be in the form of reimbursing to IFAD, on a grant basis, certain amounts actually disbursed by IFAD on some specific loans,[369] during the period 1 June–31 December 1986, or such other periods as may be agreed upon by the Netherlands and IFAD.

Another cooperation arrangement with the Netherlands was resolved by the Executive Board at its twenty-ninth session,[370] thus allowing IFAD to conclude with the Government of the Netherlands a Cooperation Agreement through which the Netherlands made available to IFAD, as a grant, an amount equivalent to approximately f. 5,794,000. This grant was for the purpose of financing, for selected IFAD projects,[371] the partial or total borrower's 1986 and/or 1987 contribution to such projects.

(*f*) Cooperation with other organizations

In accordance with article 8 of the Agreement establishing IFAD, two new cooperation agreements were signed in 1986 with organizations also concerned with agricultural development: the Financial Fund for the Development of the River Plate Basin (FONPLATA) and the West African Development Bank (which is a cooperating institution of IFAD for the administration of some IFAD loans).

In January 1986, IFAD joined the Non-Governmental Liaison Service whose primary function is to act as a channel between the United Nations as a whole and the community of non-governmental organizations (NGOs) from industrialized countries engaged in development education activities. The President of IFAD has encouraged his staff to give special importance to NGOs' activities and an Advisory Committee on Relations with NGOs has been established between various divisions in IFAD in order to ensure adequate information, promote exchange of views and foster increased participation by NGOs.

Workshops, seminars and consultations have also been held at IFAD regarding NGOs. Furthermore, the Executive Board has noted a document[372] regarding IFAD activities with NGOs and has authorized the President:

(*a*) To pursue the efforts of IFAD to identify NGOs sharing IFAD's aims for the assistance of the rural poor with the objective of involving them at appropriate stages of the project cycle; such NGOs would include those already active in project areas and those having the relevant competence and experience to make a valid contribution to IFAD's activities;

(*b*) To proceed with the further consideration of possible modalities and mechanisms for strengthening IFAD's relations with NGOs;

(*c*) To present a progress report on the outcome of these efforts to a future session of the Executive Board.

(*g*) Financial assistance provided from regular resources

Although resource constraints continued to restrict the total amount of new loans and technical assistance grants, the total number of IFAD projects in 1986 rose by 25 per cent compared to 1985, as IFAD acted to further reduce the average size of loans, increase its efforts to mobilize co-financing and hold down project costs through greater use of low-cost technologies and the participation of local NGOs and beneficiaries in project operations. Out of its regular resources, in 1986, IFAD provided loans in an amount of SDR 92.30 million to finance 17 projects (6 in Africa, 5 in Asia, 4 in Latin American and the Caribbean and 2 in the Near East and North Africa). Also, in 1986, IFAD approved 17 technical assistance grants of SDR 4.5 million, mainly for the carrying out of agricultural research.

Summing up loans and grants provided under its regular resources with loans and grants made available from the Special Programme for Sub-Saharan African Countries Affected by Drought and Desertification, the total operations of IFAD in 1986 amounted to SDR 128.95 million, compared to SDR 136.8 million in 1985. Because of the delay in the payment of contributions under the Second Replenishment and the Special Programme for Sub-Saharan African Countries (see paragraphs under (*h*) below), it has not yet been possible to bring IFAD's operational level back to the annual average that existed between 1979 and 1983 of SDR 280 million.

Under its regular resources, IFAD approved six projects for Africa (Central African Republic, Congo, Kenya, Côte d'Ivoire, Ghana and Lesotho) for SDR 29.55 million, bringing the total to 70 projects in 38 countries of Africa for SDR 618.1 million. Five projects were approved for Asia (Nepal, Papua New Guinea, Bangladesh, China and the Philippines) for SDR 30.20 million, bringing the total to 53 projects in 16 countries for SDR 743.1 million. Four projects were approved for Latin America and the Caribbean (Costa Rica, Dominica, Peru and Guyana) for SDR 17.30 million, bringing the total to 37 projects in 22 countries for SDR 270.1 million. Two projects were approved for the Near East and North Africa (Morocco and Algeria) for SDR 15.25 million, bringing the total to 36 projects in 13 countries for SDR 255.1 million.[373]

In 1986, IFAD provided technical assistance support for agricultural research programmes of international and regional centres totalling US$ 3,342,000. In providing financial support to ongoing agricultural research

programmes, IFAD also provided support for two newly initiated agricultural research programmes to the Arab Centre for the Studies of Arid Zones and Dry Lands[374] and to the International Rice Research Institute.[375] A grant was provided in the amount of US$ 268 million to the Arab Organization for Agricultural Development for partially financing a project on strengthening institutional capabilities for project preparation, appraisal, implementation and smallholder credit in parts of the Arab region. A total of US$ 1,019,000 in grants for project preparation was also granted to eight member countries: Zimbabwe, India, Laos, Malawi, Cape Verde, Sierra Leone, Madagascar and Indonesia.

(*h*) Financial assistance under the Special Programme for Sub-Saharan African Countries

At its ninth session, held in January 1986, the Governing Council unanimously approved a Special Programme for Sub-Saharan African Countries Affected by Drought and Desertification[376] and set a target of US$ 300 million.

The Special Programme is a direct contribution to the implementation of the United Nations Programme of Action. Africa's leaders have recognized the need to give increased attention to agriculture by emphasizing the role of smallholder farmers, artisanal fishermen and pastoralists, who are among IFAD's target groups. The Special Programme accordingly gives particular attention to the production of the traditional crops which are the primary concern of smallholder farmers and which tend to be most drought-resistant. The Programme stresses the important role that small-scale irrigation and soil conservation schemes can simultaneously play in increasing production on a sustainable basis and reducing the risk of future ecological problems. It also recognizes the importance of assuring both a proper policy environment and a strong institutional framework in providing the right incentives and the best support to smallholders.[377]

The Programme is designed to link ongoing emergency assistance with longer-term rehabilitation and development efforts and to establish a reliable foundation for the recovery of smallholder agriculture.

The Governing Council also adopted a Basic Framework for Special Resources for Sub-Saharan Africa (SRS), which are open to contributions from all members of IFAD, with the approval of and on such terms and conditions as may be specified by the Executive Board. The Executive Board may accept contributions to the SRS from non-member countries and other sources. The accepted contributions are required: (i) to be free of limitations on the use thereof; or (ii) to indicate that the use of the contribution will be for given countries provided that either not less than US$ 10,000,000 or not less than 20 per cent of the contribution will be free of limitations on the use thereof.[378]

In accordance with the resolution that established this Programme, operations under the Special Programme could not commence until such time as IFAD had received Instruments of Contribution from at least three member countries. Thus the Special Programme became effective in May 1986.

As of 31 December 1986, payments and firm pledges stood at US$ 197 million, or about two thirds of the target. Member countries that by that date had contributed to the Programme were Belgium (the largest contributor), Denmark, Finland, France, Ireland, Italy, Japan, Mauritania, the Netherlands, New Zealand, Niger, Norway, Sweden, the United Kingdom and the United States. Also, support has been received from the European Communities, amounting to ECU

5,000,000. This represents the first contribution of the EEC to the capital of a special fund of an international financial institution. Since this contribution was from a non-member State, pursuant to the requirements of paragraph 4 (*b*) of the Basic Framework, the President of IFAD obtained from the Executive Board at its twenty-ninth session (2–5 December 1986) a formal acceptance of the EEC's Instrument of Contribution.

Since it became operational, five loans have been granted under this Programme, totalling SDR 30.6 million, and also SDR 1.6 million have been provided as grants. Beneficiary countries are: Ethiopia, Ghana, Mali, Mauritania and the Sudan.[379]

(*i*) Membership

As of 31 December 1986, IFAD had a total membership of 142 countries: 20 in Category I (developed countries), 12 in Category II (oil-exporting countries) and 110 in Category III (other developing countries). In 1986, the Governing Council approved the applications of three States for membership: the Democratic People's Republic of Korea, Saint Christopher and Nevis, and Antigua and Barbuda. Out of the 142 members, by 31 December 1986 there were two which had not completed the membership formalities of the deposit of the instruments of accession with the Secretariat of the United Nations: Saint Vincent and the Grenadines, and the Democratic People's Republic of Korea.

(*j*) Management

(i) *Governing Council*

The tenth session of the Governing Council was held in Rome from 9 to 12 December 1986. The Governing Council replaced Mr. Abdalla Nsour of Jordan as Chairman with Mr. Taher Kanaan, Minister for Planning of Jordan. Mr. André Kempinaire, State Secretary for Development Cooperation (Belgium), continued to serve as Vice-Chairman until 11 December 1986, when he was replaced by Mr. Antoine Saintraint, Ambassador of Belgium to FAO, and Mr. Mahmoud Ahmed Uthman, Expert of the Ministry of Finance of Iraq, was elected Vice-Chairman in place of Mr. Soegito Sastromidjojo (Indonesia).

(ii) *Executive Board*

The Executive Board of IFAD held three regular sessions in 1986 (April, September and December), at which it approved 21 projects. A special session was held in January 1986, at which it endorsed the proposed Basic Framework on the Special Resources for Sub-Saharan Africa and approved a Special Operations Facility and the 1986 Programme of Work and Budget therefor.

At its tenth session, the Governing Council, pursuant to article 6, section 5, of the Agreement establishing IFAD, elected the new members of the Executive Board. The results were as follows:

Category I

	Member	*Alternate*
	Finland	Norway
	France	Austria
	Japan	Canada
	Switzerland	Netherlands
	United Kingdom	Germany, Federal Republic of
	United States	

Category II

All the members of this category were re-elected in their previous positions. The only change was:

	Libyan Arab Jamahiriya as member	Algeria as alternate

Category III

	Member	*Alternate*
Africa:	Madagascar	Zambia
Asia:	Republic of Korea	Bangladesh

The remaining members of this category continued to serve in their previous positions.

(iii) *Staff matters*

Following the successful completion of IFAD's Second Replenishment, the President, in accordance with the relevant recommendations of the International Civil Service Commission and the General Assembly of the United Nations, decided to offer career appointments to some staff who had performed satisfactorily.

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11. UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION[380]

UNIDO, which originally was established as an organ of the General Assembly of the United Nations,[381] was discontinued on 31 December 1985 in accordance with General Assembly resolution 34/96.[382] The Constitution[383] for the new UNIDO entered into force on 21 June 1985 when, according to article 25 of the Constitution, 80 States had notified the Depositary that they had agreed that the Constitution should enter into force. Through a Relationship Agreement with the United Nations,[384] UNIDO became a specialized agency of the United Nations on 1 January 1986.

After the election by the General Conference, on 12 August 1985, of 53 members to the Industrial Development Board (GC.1/Dec.6)[385] and of 27 members of the Programme and Budget Committee (GC.1/Dec.8)[385] and after the appointment by the General Conference on 17 August 1985 of Mr. Domingo L. Siazon, Jr., as Director-General of the new specialized agency (GC.1/Dec.12),[385] the work and legal structure of UNIDO have been governed by the conclusions and decisions taken by UNIDO's principal intergovernmental organs at the following meetings:

—Programme and Budget Committee, first session, 30 September–11 October 1985 and on 9 December 1985;[386]

—Industrial Development Board, first session (part two, 4–15 November 1985,[387] and resumed part two, 10–11 December 1985);[388]

—General Conference, first regular session (part two), 9–13 December 1985;[389]

—Programme and Budget Committee, second session, 12–16 May 1986;[390]

—Industrial Development Board, first special session, 15 May 1986;[391]

—Programme and Budget Committee, resumed second session, 14 October 1986;[392]

—Industrial Development Board, second session, 13–23 October 1986.[393]

Many of the issues dealt with by these organs during the first year after the conversion were of a legal nature, the most important ones of which are described in more detail below.

(*a*) Rules of procedure

The first General Conference in 1985 and the sessions of the Industrial Development Board and of the Programme and Budget Committee in 1985/86 first worked on the basis of provisional rules of procedure,[385,389,397,387,386] which during meetings of open-ended working groups were improved upon until more final versions found the agreement of delegations. At the end of 1986 the status of the three sets of rules of procedure was as follows:

(i) *General Conference*

The General Conference adopted its rules of procedure on 9 December 1985 during part two of its first session (GC.1/Dec.19).[394]

(ii) *Industrial Development Board*

The Industrial Development Board formally adopted its rules of procedure on 10 December 1986 during the resumed part two of its first session (IDB.1/Dec.33)[395] with the exception of rule 61, entitled "Procedure for the appointment of the Director-General", which was considered to be provisional pending further consideration by the Board. At its second session, which was held from 13 to 23 October 1986, the Board deferred the consideration of provisional rule 61 to its third session in 1987 (IDB.2/Dec.1).[393]

(iii) *Programme and Budget Committee*

At its second session, from 12 to 16 May 1986, the Committee adopted its rules of procedure, with the exception of rules 43 and 62, which the Committee adopted provisionally for the second session only (Conclusion 1986/1).[396] The Committee requested the Working Group on the rules of procedure to continue its consideration of rules 43 and 62 and to submit its proposals to the Committee at its third session.[390]

(*b*) Agreement between the United Nations and the United Nations Industrial Development Organization

On 17 August 1985, at its first session (part one), the Industrial Development Board recommended to the General Conference that it decide on the

provisional application of a draft relationship agreement prepared by the UNIDO secretariat (IDB.1/Dec.5),[397] which the General Conference endorsed (GC.1/Dec.11).[385] The Board also decided to establish a Committee to Negotiate a Relationship Agreement between the United Nations and UNIDO, requesting it to consider the draft relationship agreement and either to approve or revise it, and thereupon to arrange for its transmittal by the Director-General of UNIDO to the Secretary-General of the United Nations for submission to the Committee on Negotiations with Intergovernmental Agencies established by the Economic and Social Council (IDB.1/Dec.4).[395] The latter Committee met in New York on 14 and from 18 to 20 November 1985 for the purpose of consideration of the draft relationship agreement and agreed to recommend several amendments to the text proposed by UNIDO. In a subsequent meeting at Vienna on 27 November 1985, the Board's Committee to Negotiate a Relationship Agreement between the United Nations and UNIDO agreed to approve the changes proposed by the Committee of the Economic and Social Council, which were reflected in the draft agreement submitted to the Board for approval (IDB.1/Dec.37).[388] On 13 December 1985, the General Conference endorsed the approval of the Board to apply the agreement provisionally, subject to corresponding approval by the General Assembly of the United Nations (GC.1/Dec.38).[398,389] On 17 December 1985, at its 119th plenary meeting, the United Nations General Assembly adopted the Relationship Agreement.[384]

The agreement was applied provisionally from 12 December 1985 and came into force on 17 December 1985.[399]

(*c*) Agreement between the United Nations Industrial Development Organization and the United Nations Development Programme

On 7 November 1985, during part two of its first session, the Industrial Development Board recommended to the General Conference (IDB.1/Dec.24)[387] that it request the Director-General, on the basis of the draft agreement prepared by the UNIDO secretariat[400] and of the observations made during the second part of the first session of the Board as well as further observations made by Governments, to commence negotiations with the Administrator of UNDP with a view to establishing a final text as soon as possible and authorizing the Director-General to conclude the agreement on behalf of UNIDO. On 12 December 1985, the General Conference endorsed the recommendations of the Board (GC.1/Dec.39).[389] Pending conclusion of the agreement, an exchange of letters between the Director-General of UNIDO and the Administrator of UNDP provides that the current arrangements relating to UNIDO's status as executing agency of UNDP should continue to apply provisionally.[401]

(*d*) Standard Basic Cooperation Agreement between Governments and the United Nations Industrial Development Organization

(i) On 10 December 1985, during the resumed part two of its first session, the Industrial Development Board took note of the standard basic cooperation agreement prepared by the secretariat[402] as amended,[403] which the secretariat of UNIDO, taking fully into account the comments made by Governments, would use as reference when negotiating with individual Governments specific bilateral cooperation agreements; the Industrial Development Board also requested the General Conference to authorize the Director-General to propose and conclude

on behalf of UNIDO appropriate cooperation agreements which, as far as possible, should take into account the provisions of the draft standard basic cooperation agreement referred to above (IDB.1/Dec.38).[388] On 12 December 1985, the General Conference endorsed the recommendation by the Board (GC.1/Dec. 40).[389] By the end of 1986, the secretariat had elaborated a final draft agreement which was sent to the Governments of all member States listed under A and C in Annex I to the Constitution on 30 January 1987.[404]

(ii) Pending the conclusion with Governments of a standard basic cooperation agreement, provision was made that projects funded by UNIDO would be covered by certain basic terms and conditions which the Government would agree to and which would form an integral part of the project document concerned.[405] UNIDO projects funded by the United Nations Development Programme continue to be covered by the Special Basic Assistance Agreements UNDP has concluded with Governments.

(*e*) Annex in respect of UNIDO to the Convention on the Privileges and Immunities of the Specialized Agencies

On 8 November 1985, at part two of its first session, the Industrial Development Board decided to recommended for consideration and recommendation by the Economic and Social Council the text of an annex to the Convention on the Privileges and Immunities of the Specialized Agencies which was attached to decision IDB.1/Dec.28.[387]

The text of the draft annex as recommended by the Board was transmitted through the Secretary-General of the United Nations to the Economic and Social Council. On 23 July 1986, the Council adopted resolution 1986/70,[406] recommending for adoption by the Industrial Development Board a draft annex which contained a few changes made by the Council in the text proposed by the Board in its above-mentioned decision.

(*f*) Guidelines for the relationship of UNIDO with intergovernmental, governmental, non-governmental and other organizations, and related secretariat procedures

(i) On 8 November 1985, at part two of its first session, the Industrial Development Board recommended to the General Conference to issue guidelines, according to which the Director-General, with the approval of the Board, may enter into agreements or establish appropriate relations with certain organizations (IDB.1/Dec.26).[387] Such guidelines had been elaborated by the secretariat and had been considered by an open-ended working group of the Board which had suggested certain changes before the final draft was submitted to the Board for approval. On 12 December 1985, the General Conference decided to issue the guidelines annexed to decision GC.1/Dec.41.[389]

(ii) On the basis of the guidelines, secretariat procedures were established for dealing with proposals and requests for the preparation of relationship agreements and the establishment of appropriate relations, as well as for the establishment without the approval of the Board of working arrangements.[407]

(iii) As a consequence, during its second session, in October 1986, the Board authorized the Director-General to negotiate relationship agreements with 28 intergovernmental organizations (IDB.2/Dec.28),[393] granted consultative sta-

tus to 73 non-governmental organizations (IDB.2/Dec.29)[393] and requested the Director-General to report at its third session on progress achieved in concluding relationship agreements with organizations of the United Nations system (IDB.2/Dec.30).[393]

(g) UNIDO participation in an administrative tribunal

(i) After an open-ended working group of the Board had dealt with the question of the choice of an administrative tribunal, the Board, at part two of its first session, recommended to the General Conference on 7 November 1985 to request the Director-General to conclude an agreement with the Director-General of the International Labour Office recognizing the jurisdiction of the Administrative Tribunal of the International Labour Organisation for complaints alleging the non-observance, in substance or in form, of the terms of appointment of officials and of the staff regulations and rules of the staff of UNIDO; the Board also recommended to the General Conference that it request the Director-General to conclude an agreement with the Secretary-General of the United Nations extending the jurisdiction of the United Nations Administrative Tribunal to UNIDO with respect to applications by UNIDO staff members alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund (IDB.1/Dec.20).[387] On 12 December 1985 the General Conference endorsed the Board's decision (GC.1/Dec.36).[389]

(ii) In view of the above decisions, the Director-General addressed a letter to the Director-General of the International Labour Office,[408] informing him that, pursuant to the General Conference's decision and in conformity with paragraph 5 of article II of the statute of the Administrative Tribunal of the International Labour Organisation and with the annex to that statute, UNIDO recognized the jurisdiction of the Administrative Tribunal of the International Labour Organisation for the purpose of hearing complaints alleging non-observance in substance or in form of the terms of appointment of staff of the United Nations Industrial Development Organization, and of provisions of the Staff Regulations and Rules applicable to the staff of the Organization, and that the Organization likewise accepted the Rules of Procedure of the Tribunal; that recognition did not extend to the non-observance of the Regulations of the United Nations Joint Staff Pension Fund. The Director-General of UNIDO requested the Director-General of the International Labour Office to submit the matter to the Governing Body of the International Labour Office for approval with effect from the date immediately following the date, namely, 31 December 1985, on which the UNIDO established by General Assembly resolutions 2089 (XX) of 20 December 1965 and 2152 (XXI) of 17 November 1966 was terminated pursuant to paragraph 6 of General Assembly resolution 34/96 of 13 December 1979.[382] In his letter of reply,[409] the Director-General of the International Labour Office informed the Director-General of UNIDO that the Governing Body of the International Labour Organisation had approved UNIDO's above-mentioned declaration on 6 March 1986, at its 232nd session, and that the Tribunal was accordingly now competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations of UNIDO.[410]

(iii) The Director-General, by a letter dated 19 December 1985, also informed the Secretary-General of the United Nations of the General Confer-

ence's decision (GC.1/Dec.36),[389] requesting the Director-General to conclude an agreement with the Secretary-General of the United Nations extending the jurisdiction of the United Nations Administrative Tribunal to UNIDO staff members alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund and formally accepted, on behalf of UNIDO, the jurisdiction of the Administrative Tribunal of the United Nations in this respect, as of 1 January 1986. The Director-General also transmitted to the Secretary-General of the United Nations a draft agreement regarding the extension of the Tribunal's jurisdiction to UNIDO.[411] The Secretary-General of the United Nations agreed with the text proposed by UNIDO and the agreement was signed by the Director-General of UNIDO on 28 January 1986 at Vienna and by the Secretary-General of the United Nations on 7 February 1986 at New York;[412] it entered into force on 7 February 1986, with retroactive effect from 1 January 1986.

(*h*) Participation of UNIDO in the United Nations Joint Staff Pension Fund

(i) Based on the recommendations made by the Industrial Development Board on 12 and 15 November 1985, at part two of its first session (IDB.1/Dec. 19),[387] the General Conference accepted on 12 December 1985 the Regulations of the United Nations Joint Staff Pension Fund; it also requested the Director-General:

(*a*) To apply for membership for UNIDO in the United Nations Joint Staff Pension Fund with effect from 1 January 1986;

(*b*) To conclude with the Secretary of the Board of the United Nations Joint Staff Pension Fund the agreement foreseen in article 3 (*c*) of the Regulations of the Fund, governing the conditions of admission to the Fund.

The General Conference also established a UNIDO Staff Pension Committee[413] and elected two members and two alternate members of the Committee (GC.1/Dec.37).[389]

(ii) Pursuant to the decision of the General Conference under subparagraph (i) above, the Director-General addressed a cable to the Secretary of the United Nations Joint Staff Pension Fund, informing him of the General Conference's approval of UNIDO's participation in the UNJSPF and at the same time applying formally for UNIDO's admission to the UNJSPF.[414]

(iii) Pursuant to the General Conference's decision under subparagraph (ii) above, the Director-General concluded an agreement along the lines of a draft prepared by the Secretary of the UNJSPF,[415] which was signed by the Secretary of the UNJSPF at New York on 20 December 1985 and by the Director-General of UNIDO at Vienna on 31 December 1985.[416] It entered into force on 1 January 1986. In his letter transmitting to UNIDO the agreement for signature,[415] the Secretary of the UNJSPF also informed the Director-General that on 18 December 1985 the General Assembly of the United Nations had adopted a resolution on the United Nations pension system, which states in its part IV that the General Assembly: "*Decides* that the United Nations Industrial Development Organization shall be admitted to membership in the [United Nations Joint Staff Pension] Fund with effect from 1 January 1986, in accordance with article 3 (*c*) of the Regulations of the Fund".[417]

(*i*) Agreement between the United Nations and UNIDO for the Transfer, Secondment and Loan of Staff

(i) The General Assembly of the United Nations, in paragraph 4 of its resolution 34/96 of 13 December 1979 on transitional arrangements relating to the establishment of UNIDO as a specialized agency, urged that "all members of the staff of the United Nations assigned to the existing United Nations Industrial Development Organization should be offered appointments by the new agency that preserve their acquired rights and contractual status".[382] In paragraph (*c*) of decision 9 adopted by the General Conference of UNIDO on 12 August 1985,[385] the Director-General was invited to take due account of paragraph 4 of General Assembly resolution 34/96.

(ii) In view of the above, the Secretary-General of the United Nations and the Director-General of UNIDO concluded an agreement on the transfer, secondment and loan of staff which through an exchange of cables entered into force on 9 November 1985,[418] and was subsequently signed by the Director-General and the Secretary-General on 14 and 20 November 1985, respectively.[419]

(*j*) Draft staff regulations of UNIDO

On 12 November 1985, during part two of its first session, the Industrial Development Board took note of the Director-General's intention to submit to the Board at its second session proposed draft staff regulations of UNIDO for its consideration and subsequent recommendation to the General Conference for approval. The Board also noted that, pending approval of such staff regulations, and in accordance with article 26.2 of the Constitution, the Staff Regulations of the United Nations as of 31 December 1985, *mutatis mutandis,* would continue to be applied to the staff of UNIDO (IDB.1/Dec.17).[387] On 16 October 1986, at its second session, the Board decided to establish an informal open-ended working group to study the draft staff regulations[420] and requested the working group to submit its recommendations to the Board at its third session (IDB.2/Dec.22).[393]

(*k*) Transfer of assets from the United Nations to UNIDO

(i) On 4 November 1985, during part two of its first session, the Board took note of the information provided by the Director-General[421] and recommended to the General Conference (*a*) to request the Director-General to take the necessary measures to effect transfer of assets from the United Nations to UNIDO; (*b*) to authorize the Director-General to enter into appropriate arrangements with the Secretary-General of the United Nations and the Administrator of UNDP, in respect of transfer of assets; and (*c*) to request the Director-General to report on this matter of the Board at its second regular session (IDB.1/Dec.21).[387] The General Conference endorsed this recommendation of the Board on 12 December 1985, during part two of its first regular session (GC.1/Dec.35).[389]

(ii) In view of the above, the Director-General reported to the Board at its second session (13–23 October 1986) that the secretariat of UNIDO had held talks and conducted negotiations with the competent officials in the Secretariat of the United Nations. A preliminary draft text had been prepared of an administrative agreement that could be concluded between the Secretary-General of the

United Nations and the Director-General. Views were still being exchanged on the technical aspects of the agreement, which was based on the principles stated in resolution 34/96.[382] Considering that the arrangements for transfer of assets had not yet been completed, the Board requested the Director-General to report on the arrangements for transfer of assets from the United Nations to UNIDO to the Board at its third regular session (IDB.2/Dec.25).[393]

(*l*) Financial regulations

(i) On 1 October 1985, during its first session, the Programme and Budget Committee recommended the approval of the application by the Director-General of the Financial Regulations and Rules of the United Nations as of 31 December 1985, *mutatis mutandis,* pending the adoption of the new financial regulations of UNIDO by the General Conference (Conclusion 1985/3).[386] On 4 November 1985, during part two of its first session, the Board endorsed the Programme and Budget Committee's recommendation (IDB.1/Dec.12).[387] On 12 December 1985, the General Conference, at part two of its first session, took note of the Board's decision (GC.1/Dec.31).[389]

(ii) During its second session (12–16 May 1986), the Programme and Budget Committee decided to set up an informal open-ended working group to review the draft financial regulations of UNIDO.[422] The Committee requested the working group to commence its work in June 1986 and to report to the Programme and Budget Committee at its third session (Conclusion 1986/4).[390] On 17 October 1986, the Board during its second session decided to defer the consideration of the item on financial regulations to its third session (IDB.2/Dec.6).[393]

(*m*) Headquarters Agreement between UNIDO and the Republic of Austria

(i) On the basis of article 20 of UNIDO's Constitution,[383] of paragraph 9 of General Assembly resolution 34/96[382] and of paragraph 31 of the report of the formal meeting on the conversion of UNIDO into a specialized agency, convened at Vienna from 16 to 20 May 1983,[423] consultations were held on the legal aspects of the question of headquarters and additional agreements for UNIDO between representatives of the Federal Government of Austria, of IAEA, of the United Nations and of UNIDO for the purpose of establishing texts mutually acceptable to all parties concerned.[424] On 4 November 1985, at part two of its first session, the Board took note of the information provided by the Director-General on progress made in the preparation of the final texts of the headquarters agreement[425] (IDB.1/Dec.28).[387] The General Conference, on 12 December 1985, took note of information orally provided by the Director-General in this respect (GC.1/Dec.42).[389] As a consequence, on 20 December 1985 the international organizations concerned and the Federal Government of Austria concluded formal exchanges of letters constituting interim agreements.[426] The agreements entered into force on 1 January 1986.[427]

These letters provide that the existing agreements shall continue to apply, *mutatis mutandis,* pending the entry into force of definitive instruments required to be negotiated and concluded as a result of the conversion of UNIDO into a specialized agency. The conclusion of these interim agreements has ensured that the organizations will continue to enjoy the same measure of privileges and

immunities as in the past, that there will be no legal lacuna due to the establishment of UNIDO as a new international organization with a legal personality separate from that of the United Nations and that the new UNIDO henceforth is a party to all the relevant headquarters agreements currently in force.

(ii) Since the conclusion of the interim agreements, the secretariat has undertaken a review of the existing agreements, and consultations have been initiated at the secretariat level between the United Nations, IAEA and UNIDO with a view to establishing draft texts acceptable to all concerned which could serve as a basis for negotiations with the host Government to arrive at definitive agreements. On 16 October 1986, at its second session, the Board took note of the report by the Director-General[425] and decided to include an item on the headquarters agreement between UNIDO and the Republic of Austria in the provisional agenda of its third session (IDB.2/Dec.27).[393]

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12. INTERNATIONAL ATOMIC ENERGY AGENCY

AMENDMENT TO ARTICLE VI.A.1 OF THE STATUTE

An amendment to article VI.A.1 of the IAEA statute[428] providing for the designation by the Board of Governors each year of the 10—instead of 9—member States "most advanced in the technology of atomic energy including the production of source materials" had been accepted by 39 member States by the end of the year. The amendment will come into force when it has been accepted by two thirds of the member States in accordance with their respective constitutional requirements.

PHYSICAL PROTECTION OF NUCLEAR MATERIAL

The Convention on the Physical Protection of Nuclear Material[429] was signed by six more States—Argentina, Ecuador, Indonesia, Liechtenstein, Mongolia and Spain—and ratified by three more States—Indonesia, Liechtenstein and Mongolia. By the end of the year, 45 States and one regional organization—the European Atomic Energy Community (EURATOM)—had signed the Convention and 20 States had ratified it.[430]

ADVISORY SERVICES IN NUCLEAR LEGISLATION

Advice on nuclear legislation and regulatory activities was provided to Algeria, Morocco and Tunisia in October and November 1986 respectively, under the IAEA Technical Cooperation Programme. In the case of Algeria and Tunisia, these advisory services related primarily to the elaboration of regulations implementing radiation protection decrees, based on the IAEA Basic Safety Standards for Radiation Protection,[431] and which had been the object of earlier assistance provided by IAEA during the drafting process. In the case of Morocco, besides the elaboration of similar regulations, IAEA advice related to the framing of legislation required for the implementation of a nuclear power programme.

REGIONAL OVERVIEW COURSE ON NUCLEAR REGULATION

In cooperation with the Atomic Energy Licensing Board of Malaysia, IAEA organized a Regional Overview Course on Regulatory Aspects of Radiation and Nuclear Safety at Kuala Lumpur in April 1986. The course covered regulatory

issues and activities involved in radiation protection and nuclear safety, extending from regulatory preparations to the enforcement of regulations. A total of 40 participants from 15 member States took part in the course, for which cost-free experts were provided by Canada, France, the Federal Republic of Germany and the United States of America.

Conventions relating to nuclear accidents

In the aftermath of the Chernobyl accident and at the request of its Board of Governors, IAEA convened at Vienna a meeting of governmental experts from 21 July to 15 August 1986 to draft, on an urgent basis, two international agreements: one to deal with early notification and comprehensive information about nuclear accidents with potential transboundary effects, and the other with the coordination of emergency response and assistance. Two conventions were elaborated by the meeting, in which experts from 62 member States and representatives of 10 international organizations took part: the Convention on Early Notification of a Nuclear Accident[432] and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency.[433] These Conventions, as adopted by consensus by the experts' meeting on 15 August 1986, were subsequently endorsed by the Board of Governors, adopted by the General Conference on 26 September 1986 at a special session and opened for signature by all States on the same date at Vienna, and from 6 October 1986 at United Nations Headquarters in New York.

Early Notification Convention

The Early Notification Convention covers all uncontrolled releases of radioactive material from any source, irrespective of its nature and location, that may result in transboundary effects which could be of radiological safety significance to another State. Thus, any nuclear accident involving facilities or activities carried out anywhere under the jurisdiction or control of a State Party—be it on land, at sea or in outer space—is subject to the notification required by the Convention. The only exceptions are accidents connected with nuclear weapons and nuclear-weapon tests. In the latter case, however, the Convention provides that States Parties may voluntarily notify such accidents with a view to minimizing the radiological consequences. In this connection, all the five nuclear-weapon States have pledged to make such notifications, which are outside the scope of the Convention.

In the event of a nuclear accident with actual or potential transboundary effects, a State Party is required to notify immediately other States which may be physically affected, directly or through IAEA, as well as IAEA, of the nature of the accident, the time of its occurrence and the exact location, where appropriate. It is further obliged to provide them promptly with such available information relevant to minimizing the radiological consequences in the affected countries. The information to be provided by the notifying State is specified in the Convention, which also requires that State to respond promptly to a request by an affected State Party for additional information or consultations that would enable the latter to take measures for protecting the health and safety of its population and its environment.

Under the Convention, IAEA is to serve as the focal point for receiving notification of a nuclear accident and for providing States Parties, member States and appropriate international organizations with relevant information received by it. It will also, in accordance with its statute and upon request, assist a State

Party which has no nuclear activities and borders on a State which is not party but has an active nuclear-power programme, in feasibility studies for the establishment of an appropriate monitoring system for the purposes of the Convention. The conclusion of bilateral or multilateral arrangements among the Parties is viewed in the Convention as a means of strengthening mutual cooperation in the area covered by it.

Emergency Assistance Convention

The Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency sets out an international framework aimed at facilitating the prompt provision of such assistance, directly among States Parties or through IAEA and from it, as well as from other international organizations. States Parties are required to notify IAEA of experts, equipment and materials they could make available for the provision of emergency assistance to other States. The overall direction and control of the assistance are the responsibility of the requesting State, which will provide, to the extent of its capabilities, local facilities and supporting services for effective administration of the assistance received. It will also grant to the personnel provided by the assisting Party the necessary privileges and immunities for the carrying out of the assistance functions. The requesting State will further hold the personnel and legal entities acting for the assisting Party harmless with respect to claims from third parties connected with assistance operations, except in the case of wilful misconduct.

The States Parties undertake to facilitate the transit through their territories of personnel, equipment and property involved in emergency assistance, at the request of a State receiving it. Assistance may be provided cost-free and, to this end, the special needs of developing countries and countries without nuclear installations as well as other relevant factors will be taken into account.

The Convention assigns a major role to IAEA with a view to facilitating and supporting cooperation among States Parties in emergency assistance. Thus, IAEA will make available its good offices to States Parties and member States for securing the assistance needed, maintain liaison with other international organizations for this purpose and assist States Parties and member States in various ways—in particular, in expert services and manpower training and development—with a view to strengthening their capabilities to cope with a nuclear accident or radiological emergency.

Provisions common to both conventions

Under both conventions, the confidentiality of any information provided in confidence is to be protected by States and international organizations receiving it.

A State may, upon signature of either convention or before its entry into force, accept to apply it provisionally. The consent to be bound by three States will bring each convention into effect.

Status of the conventions

By the end of 1986, 58 States had signed the Early Notification Convention, and 57 States the Emergency Assistance Convention. Three States having signed the first Convention without reservation as to ratification, it accordingly entered into force on 27 October 1986; other States had declared their willingness to apply the Convention provisionally pending ratification by them. As regards the

second Convention, one State had expressed consent to be bound by it upon signature.[434]

Regional Cooperative Agreement

Within the framework of the Regional Cooperative Agreement for Research Development and Training Related to Nuclear Science and Technology (the RCA),[435] the Agreement establishing the Asian Regional Cooperative Project on Medical and Biological Applications of Nuclear Techniques, done at Vienna on 20 February 1986,[436] entered into force on 20 May 1986, following notification of acceptance by Japan, Bangladesh and the Philippines; it was further accepted by Indonesia, Sri Lanka and Pakistan before the end of 1986.

Notes

[1] General Assembly resolution S-10/2; see *Official Records of the General Assembly, Tenth Special Session, Supplement No. 4* (A/S-10/4), sect. III.

[2] Adopted by a recorded vote of 155 to none, with no abstentions.

[3] *Official Records of the General Assembly, Forty-first Session, Supplement No. 42* (A/41/42), annex II.

[4] Adopted without a vote.

[5] Adopted by a recorded vote of 154 to 1, with no abstentions.

[6] *Official Records of the General Assembly, Twelfth Special Session, Annexes* (A/S-12/32).

[7] A/33/305.

[8] Adopted by a recorded vote of 118 to 19, with 9 abstentions.

[9] Adopted by a recorded vote of 135 to 13, with 5 abstentions.

[10] Adopted without a vote.

[11] A/41/422 and Add.1 and 2.

[12] Adopted by a recorded vote of 116 to none, with 26 abstentions.

[13] A/41/466 and Add.1.

[14] Adopted without a vote.

[15] Adopted without a vote.

[16] Adopted by a recorded vote of 130 to 15, with 5 abstentions.

[17] Adopted by a recorded vote of 140 to none, with 13 abstentions.

[18] Adopted by a recorded vote of 136 to 12, with 5 abstentions.

[19] Adopted by a recorded vote of 139 to 12, with 4 abstentions.

[20] Adopted by a recorded vote of 118 to 17, with 10 abstentions.

[21] Adopted by a recorded vote of 132 to 17, with 4 abstentions.

[22] Adopted by a recorded vote of 135 to 3, with 14 abstentions.

[23] *Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, Part I* (NPT/CONF.III/64/I) (Geneva, 1985), annex I.

[24] United Nations, *Treaty Series*, vol. 480, p. 43.

[25] United Nations, *Treaty Series*, vol. 729, p. 161.

[26] Adopted by a recorded vote of 127 to 3, with 21 abstentions.

[27] Adopted by a recorded vote of 137 to 1, with 15 abstentions.

[28] Adopted by a recorded vote of 130 to 1, with 22 abstentions.

[29] Adopted by a recorded vote of 106 to 18, with 25 abstentions.

[30] Adopted by a recorded vote of 149 to none, with 4 abstentions.

[31] Adopted by a recorded vote of 145 to none, with 7 abstentions.

[32] United Nations, *Treaty Series*, vol. 634, p. 281.

[33] Adopted by a recorded vote of 150 to none, with 5 abstentions.

[34] Adopted by a recorded vote of 139 to 4, with 13 abstentions.

[35] Adopted without a vote.

[36] Adopted by a recorded vote of 95 to 2, with 56 abstentions.

[37] Adopted by a recorded vote of 107 to 3, with 41 abstentions.

[38] Adopted without a vote.

[39] *International Legal Materials,* vol. 25, p. 1370.

[40] Ibid., p. 1377.

[41] Adopted by a recorded vote of 100 to 11, with 43 abstentions.

[42] Adopted by a recorded vote of 137 to none, with 14 abstentions.

[43] BWC/CONF.II/13/II, part II.

[44] Adopted without a vote.

[45] Adopted by a recorded vote of 154 to none, with 1 abstention.

[46] Adopted by a recorded vote of 128 to 1, with 25 abstentions.

[47] Adopted without a vote.

[48] Adopted by a recorded vote of 111 to 3, with 38 abstentions.

[49] Adopted by a recorded vote of 150 to none, with 2 abstentions.

[50] Adopted by a recorded vote of 137 to none, with 7 abstentions.

[51] Adopted by a recorded vote of 129 to none, with 21 abstentions.

[52] Adopted without a vote.

[53] A/CONF.95/15 and Corr.2, annex I. For the text of the Convention and its Protocols, see also *The United Nations Disarmament Yearbook,* vol. 5: 1980 (United Nations publication, Sales No. E.81.IX.4), appendix VII.

[54] Adopted without a vote.

[55] Adopted without a vote.

[56] General Assembly resolution 2832 (XXVI) of 16 December 1971.

[57] General Assembly resolution 2734 (XXV); also reproduced in *Juridical Yearbook,* 1970, p. 62.

[58] Adopted by a recorded vote of 126 to 1, with 24 abstentions.

[59] See A/41/904.

[60] For the report of the Subcommittee, see A/AC.105/370 and Corr.1.

[61] A/AC.105/C.2/L.154.

[62] A/AC.105/C.2/L.153.

[63] A/AC.105/C.2/L.155.

[64] A/AC.105/360 of 6 November 1985.

[65] See *Official Records of the General Assembly, Forty-first Session, Supplement No. 20* (A/41/20 and Corr.1), chap. II, sects. C and E.

[66] Adopted without a vote.

[67] See A/41/751.

[68] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (resolution 2222 (XXI), annex); Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (resolution 2345 (XXII), annex); Convention on International Liability for Damage Caused by Space Objects (resolution 2777 (XXVI), annex); Convention on Registration of Objects Launched into Outer Space (resolution 3235 (XXIX), annex); and Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (resolution 34/68, annex).

[69] Adopted without a vote.

[70] See A/41/751.

[71] Adopted without a vote.

[72] See A/41/751.

[73] United Nations, *Treaty Series,* vol. 1023, p. 15.

[74] Adopted by a recorded vote of 94 to none, with 12 abstentions.

[75] See A/41/902.

[76] Adopted by a recorded vote of 96 to none, with 12 abstentions.

[77] See A/41/902.

[78] Adopted without a vote.

[79] See A/41/857/Add.1.

[80] A/41/715.

[81] For detailed information, see *Official Records of the General Assembly, Forty-first Session, Supplements No. 12* (A/41/12) and *No. 12 A* (A/41/12/Add.1).

[82] United Nations, *Treaty Series,* vol. 189, p. 137.

[83] Ibid., vol. 606, p. 267.

[84] *Official Records of the General Assembly, Thirty-second Session, Supplement No. 12 A* (A/32/12/Add.1), para. 53 (4) (*c*).

[85] Ibid., para. 53 (6).

[86] Adopted without a vote.

[87] See A/41/880.

[88] *Official Records of the General Assembly, Forty-first Session, Supplement No. 12 A* (A/41/12/Add.1), para. 128.

[89] United Nations, *Treaty Series,* vol. 520, p. 151.

[90] Ibid., vol. 1019, p. 175.

[91] Ibid., vol. 976, p. 105.

[92] Adopted without a vote.

[93] See A/41/851.

[94] See *Official Records of the Economic and Social Council, 1986, Supplement No. 3* (E/1986/23), chap. X, sect. A.

[95] See General Assembly resolution 2200 A (XXI), annex; also reproduced in *Juridical Yearbook, 1966,* p. 166.

[96] United Nations, *Treaty Series,* vol. 993, p. 3.

[97] Ibid., vol. 999, p. 171.

[98] Ibid.

[99] Adopted without a vote.

[100] See A/41/878.

[101] See *Official Records of the General Assembly, Forty-first Session, Supplement No. 40* (A/41/40).

[102] Adopted by a recorded vote of 129 to 1, with 25 abstentions.

[103] See A/41/878.

[104] See Economic and Social Council resolution 1985/17 of 28 May 1985.

[105] Adopted without a vote.

[106] See General Assembly resolution 2106 A (XX), annex; also reproduced in *Juridical Yearbook, 1965,* p. 63; see also United Nations, *Treaty Series,* vol. 660, p. 195.

[107] Adopted without a vote.

[108] See A/41/793.

[109] A/41/508.

[110] General Assembly resolution 38/14.

[111] Adopted without a vote.

[112] See A/41/793.

[113] See General Assembly resolution 3068 (XXVIII); also reproduced in *Juridical Yearbook, 1973,* p. 70; see also United Nations, *Treaty Series,* vol. 1015, p. 243.

[114] Adopted by a recorded vote of 128 to 1, with 27 abstentions.

[115] See A/41/793.

[116] A/41/512.

[117] E/CN.4/1986/30, sect. V.

[118] See General Assembly resolution 34/180, annex; also reproduced in *Juridical Yearbook, 1979,* p. 114; see also United Nations, *Treaty Series,* vol. 1249, p. 13.

[119] Adopted without a vote.

[120] A/41/819.

[121] A/41/608 and Add.1.

[122] See *Official Records of the General Assembly, Forty-first Session, Supplement No. 45* (A/41/45 and Corr.1), chap. IV, paras. 362 and 363.

[123] See General Assembly resolution 39/46, annex; also reproduced in *Juridical Yearbook, 1984,* p. 135.

[124] Adopted without a vote.

[125] A/41/883.
[126] A/41/511.
[127] Adopted by a recorded vote of 131 to none, with 24 abstentions.
[128] The text of the Convention is reproduced in chapter IV of the present *Yearbook.*
[129] Adopted without a vote.
[130] See A/41/874/Add.2.
[131] Adopted without a vote.
[132] See A/41/809.
[133] A/41/433 and Add.1–3.
[134] Adopted by a recorded vote of 126 to 18, with 12 abstentions.
[135] See A/41/809.
[136] General Assembly resolution 217 A (III)
[137] General Assembly resolution 1514 (XV).
[138] Adopted without a vote.
[139] See A/41/877.
[140] See *Official Records of the Economic and Social Council, 1986, Supplement No. 2* (E/1986/22), chap. XIII.
[141] Adopted by a recorded vote of 131 to none, with 24 abstentions.
[142] See A/41/876.
[143] A/41/463 and Add.1.
[144] General Assembly resolution 3384 (XXX) of 10 November 1975.
[145] Adopted by a recorded vote of 129 to 10, with 15 abstentions.
[146] See A/41/876.
[147] Adopted without a vote.
[148] See A/41/876.
[149] E/CN.4/Sub.2/1983/17.
[150] Adopted by a recorded vote of 146 to 1, with 18 abstentions.
[151] See A/41/925.
[152] Adopted by a recorded vote of 133 to 11, with 12 abstentions.
[153] See A/41/925.
[154] General Assembly resolution 3201 (S-VI) and 3202 (S-VII).
[155] General Assembly resolution 35/56, annex.
[156] General Assembly resolution 3281 (XXIX).
[157] Adopted by a recorded vote of 109 to none, with 41 abstentions.
[158] See A/41/925.
[159] Adopted by a recorded vote of 148 to 1, with 4 abstentions.
[160] See A/41/874/Add.2.
[161] See A/C.3/41/3.
[162] Adopted without a vote.
[163] See A/41/755.
[164] A/41/324, annex.
[165] Adopted without a vote.
[166] See A/41/874/Add.1.
[167] General Assembly resolution 40/34, annex.
[168] See *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August–6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2.
[169] General Assembly resolution 34/169, annex.
[170] E/CN.4/Sub.2/1985/18 and Add.1–6.
[171] Adopted without a vote.
[172] See A/41/874/Add.1.
[173] E/CN.4/1986/21.
[174] Adopted without a vote.
[175] See A/41/874/Add.2.
[176] Adopted without a vote.
[177] See A/41/875.

[178] See E/CN.4/1984/3–E/CN.4/Sub.2/1983/43 and Corr.1 and 2, chap. XXI, sect. A.
[179] General Assembly resolution 36/55 of 25 November 1981.
[180] Adopted without a vote.
[181] See A/41/878.
[182] Adopted by a recorded vote of 134 to 1, with 21 abstentions.
[183] See A/41/925.
[184] Adopted without a vote.
[185] See A/41/925.
[186] Adopted without a vote.
[187] See A/41/925.
[188] E/CN.4/1986/20 and Add.1–3.
[189] United Nations publication, Sales No. E.83.XIV.1.
[190] Adopted without a vote.
[191] See A/41/879.
[192] A/41/510.
[193] See Economic and Social Council resolution 1985/17 of 28 May 1985.
[194] E/1985/18, chap. IV, paras. 22–28.
[195] Adopted without a vote.
[196] See A/41/874/Add.2.
[197] A/41/274.
[198] United Nations, *Treaty Series*, vol. 78, p. 277.
[199] Adopted without a vote.
[200] See A/41/874/Add.1.
[201] A/41/507.
[202] Adopted without a vote.
[203] See A/41/802.
[204] A/41/618.
[205] See *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August–6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1).
[206] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVII (United Nations publication, Sales No. E.84.V.3), document A/CONF.62/122; see also *The Law of the Sea: United Nations Convention on the Law of the Sea with Index and Final Act of the Third United Nations Conference on the Law of the Sea* (United Nations publication, Sales No. E.83.V.5).
[207] For detailed information on the work of the Preparatory Commission, see the report of the Secretary-General (A/41/742).
[208] LOS/PCN/78.
[209] LOS/PCN/72.
[210] LOS/PCN/SCN.3/WP.6.
[211] LOS/PCN/SCN.4/WP.2.
[212] Adopted by a recorded vote of 145 to 2, with 5 abstentions.
[213] For the composition of the Court, see General Assembly decision 40/309.
[214] As of 31 December 1986, the number of States recognizing the jurisdiction of the Court as compulsory in accordance with declarations filed under Article 36, paragraph 2, of the Statute of the International Court of Justice stood at 46.
[215] For detailed information, see *I.C.J. Yearbook 1985–1986*, No. 40.
[216] *I.C.J. Reports 1986*, p. 14.
[217] *I.C.J. Reports 1984*, pp. 424 and 425, para. 73.
[218] *I.C.J. Reports 1986*, pp. 151–211.
[219] Ibid., pp. 212–546.
[220] For detailed information, see *I.C.J. Yearbook 1985–1986*, No. 40, and *I.C.J. Yearbook 1986–1987*, No. 41.
[221] *I.C.J. Reports 1986*, p. 548.
[222] For detailed information, see *I.C.J. Yearbook 1985–1986*, No. 40, and *I.C.J. Yearbook 1986–1987*, No. 41.

[223] *I.C.J. Reports 1986*, p. 551.

[224] For detailed information, see *I.C.J. Yearbook 1985–1986*, No. 40, and *I.C.J. Yearbook 1986–1987*, No. 41.

[225] *I.C.J. Reports 1986*, p. 3.

[226] Ibid., p. 554.

[227] Ibid., pp. 652 and 659.

[228] For detailed information, see *I.C.J. Yearbook 1986–1987*, No. 41.

[229] For detailed information, see *I.C.J. Yearbook 1985–1986*, No. 40, and *I.C.J. Yearbook 1986–1987*, No. 41.

[230] See *I.C.J. Yearbook 1972–1973*, p. 127; and *I.C.J. Yearbook 1981–1982*, pp. 131–132.

[231] For the membership of the Commission, see *Official Records of the General Assembly, Forty-first Session, Supplement No. 10* (A/41/10), chap. I.

[232] For detailed information, see *Yearbook of the International Law Commission, 1986*, vol. I (United Nations publication, Sales No. E.87.V.7); ibid., vol. II, Part One (United Nations publication, Sales No. E.87.V.8. (Part I)); and ibid., Part Two (United Nations publication, Sales No. E.87.V.8 (Part II)).

[233] A/CN.4/396 and Corr.1.

[234] A/CN.4/400.

[235] A/CN.4/397 and Corr.1 and 2 and A/CN.4/397/Add.1 and Corr.1.

[236] A/CN.4/398 and Corr.1–3.

[237] A/CN.4/334 and Add.1 and 2.

[238] A/CN.4/402 and Corr.1, 2 and 4.

[239] A/CN.4/399 and Add.1 and 2.

[240] *Official Records of the General Assembly, Forty-first Session, Supplement No. 10* (A/41/10).

[241] Adopted without a vote.

[242] See A/41/892.

[243] For membership of the Commission, see *Official Records of the General Assembly, Forty-first Session, Supplement No. 17* (A/41/17), chap. I.B, para. 4.

[244] For detailed information, see *Yearbook of the United Nations Commission on International Trade Law*, vol. XVII: 1986 (United Nations publication, Sales No. E.88.V.4).

[245] A/CN.9/273.

[246] A/CN.9/274.

[247] A/CN.9/285.

[248] A/CN.9/278.

[249] A/CN.9/276.

[250] A/CN.9/WG.V/WP.17 and Add.1–9.

[251] A/CN.9/277.

[252] A/CN.9/275.

[253] A/CN.9/281.

[254] A/CN.9/280.

[255] A/CN.9/279.

[256] A/CN.9/282.

[257] Adopted without a vote.

[258] See A/41/861.

[259] Adopted by a recorded vote of 125 to 10, with 17 abstentions.

[260] See A/41/886.

[261] See *Official Records of the United Nations Conference on the Representation of States in Their Relations with International Organizations, Vienna, 4 February–14 March 1975*, vol. II (United Nations publication, Sales No. E.75.V.12), document A/CONF.67/15, annex.

[262] United Nations, *Treaty Series*, vol. 1125 (Protocol I, p. 3, and Protocol II, p. 609).

[263] Adopted without a vote.

[264] See A/41/887.

[265] United Nations, *Treaty Series*, vol. 75, pp. 31, 85, 135 and 287.

[266] Adopted by a recorded vote of 131 to none, with 23 abstentions.

[267] See A/41/888.

[268] A/39/504/Add.1, annex III.

[269] Adopted without a vote.

[270] See A/41/889.

[271] General Assembly resolution 37/10, annex; reproduced in *Juridical Yearbook, 1982*, p. 103.

[272] A/AC.182/L.47.

[273] A/AC.182/L.46.

[274] See *Official Records of the General Assembly, Forty-first Session, Sixth Committee*, 15th to 21st, 47th and 48th meetings and corrigendum.

[275] Ibid., *Forty-first Session, Supplement No. 33* (A/41/33), sect. II.

[276] For the report of the Special Committee, see *Official Records of the General Assembly, Forty-first Session, Supplement No. 41* (A/41/41).

[277] Ibid., *Thirty-fourth Session, Supplement No. 41* (A/34/41 and Corr.1), annex.

[278] Ibid., para. 129.

[279] Ibid., *Thirty-sixth Session, Supplement No. 41* (A/36/41), para. 259.

[280] Ibid., *Thirty-seventh Session, Supplement No. 41* (A/37/41 and Corr.1), para. 372.

[281] Adopted without a vote.

[282] See A/41/860.

[283] Adopted without a vote.

[284] See A/41/891.

[285] A/41/547 and Add.1–4.

[286] Adopted without a vote.

[287] See A/41/872.

[288] See *Official Records of the General Assembly, Fortieth Session, Supplement No. 43* (A/40/43).

[289] Ibid., *Fortieth Session, Sixth Committee*, 13th to 17th, 44th and 48th meetings.

[290] Ibid., *Forty-first Session, Sixth Committee*, 25th, 26th, 46th and 47th meetings and corrigendum.

[291] For detailed information, see *Official Records of the General Assembly, Forty-first Session, Supplement No. 26* (A/41/26).

[292] A/AC.154/264.

[293] Adopted without a vote.

[294] See A/41/893.

[295] For the report of the Special Committee, see *Official Records of the General Assembly, Forty-first Session, Supplement No. 33* (A/41/33).

[296] A/AC.132/L.47.

[297] A/AC.182/L.46.

[298] A/AC.182/L.43/Rev.1.

[299] A/AC.182/L.38/Rev.2.

[300] A/AC.182/L.48.

[301] Adopted without a vote.

[302] See A/41/894.

[303] Adopted without a vote.

[304] See A/41/895.

[305] General Assembly resolution 2625 (XXV), annex.

[306] A/C.6/41/L.14.

[307] Adopted without a vote.

[308] See A/41/898.

[309] Adopted without a vote.

[310] *Official Records of the General Assembly, Forty-first Session, Annexes*, agenda item 134, document A/41/896, para. 10.

[311] A/C.6/41/L.19.

[312] Adopted by a recorded vote of 127 to 1, with 22 abstentions.

[313] *Official Records of the General Assembly, Forty-first Session, Annexes,* agenda item 138, document A/41/899, para. 7.

[314] A/CONF.129/15; the text of the Convention is reproduced in chapter IV of the present *Yearbook.*

[315] Adopted without a vote.

[316] See A/41/950.

[317] A/C.5/41/12 and Corr.1.

[318] Adopted without a vote.

[319] A/41/653.

[320] With regard to the adoption of instruments, information on the preparatory work, which by virtue of the double-discussion procedure normally covers a period of two years, is given in order to facilitate reference work in the year during which the instrument was adopted.

[321] *Official Bulletin,* vol. LXIX, 1986, series A, No. 22, pp. 60–67; English, French, Spanish. Regarding the preparatory work, see "Report by the Director-General on the Exercise of His Good Offices", ILC, 72nd session (1986), *Record of Proceedings,* No. 3; English, French, Spanish. See also ILC, 72nd session (1986), *Record of Proceedings,* No. 36; No. 36A; No. 38, pp. 8–11; No. 39, pp. 19–23, 27–29; English, French, Spanish.

[322] *Official Bulletin,* vol. LXIX, 1986, series A, No. 2, pp. 74–90; English, French, Spanish. Regarding preparatory work, see: *First Discussion*—Safety in the Use of Asbestos, ILC, 71st session (1985), report VI(1) (this report contains, *inter alia,* details of the action which led to the placing of the question on the agenda of the Conference) and report VI(2), 52 and 79 pages respectively; English, French, German, Russian, Spanish. See also ILC, 71st session (1985), *Record of Proceedings,* No. 33; No. 39, pp. 1–4, 23–24; English, French, Spanish. *Second Discussion*—Safety in the Use of Asbestos, ILC, 72nd session (1986), report IV(1) and report IV(2), 68 and 115 pages respectively; English, French, German, Russian, Spanish. See also ILC, 72nd session (1986), *Record of Proceedings,* No. 29; No. 29A; No. 29B; No. 38, pp. 1–8; No. 39, pp. 10–15; English, French, Spanish.

[323] This report has been published as report III (part 4) to the 72nd session of the Conference and comprises two volumes: Vol. A: "General Report and Observations concerning Particular Countries" (report III (Part 4A)), 368 pages; English, French, Spanish. Vol. B: "General Survey of the Reports on the Equal Remuneration Convention (No. 100) and Recommendation (No. 90), 1951" (report III (Part 4B)), 203 pages; English, French, Spanish.

[324] *Official Bulletin,* vol. LXIX, 1986, series B, No. 1.

[325] Ibid., vol. LXIX, 1986, series B, No. 2.

[326] For general information on the organization and functions of the Legal Office, see *Juridical Yearbook, 1972,* pp. 60–63. In addition to the Legal Counsel, in 1986 the Office of the Legal Counsel included five legal officers. The staff of the Legislation Branch included 10 legal officers.

[327] See on this case and issues arising therefrom *Juridical Yearbook 1982, 1983, 1984* and *1985.*

[328] CCLM 48/2; CL 90/5; CL 90/PV/17; CL 90/PV/19 and CL/REP, paras. 173–178.

[329] CL 89/REP, para. 8.

[330] Ibid.

[331] CL 89/REP, para. 9.

[332] CL 90/5.

[333] CL 90/REP, paras. 181 and 182.

[334] CL 90/REP, paras. 183–185.

[335] CL 90/REP, paras. 186–188.

[336] CL 90/REP, paras. 189–191.

[337] Report of the eighth session of the Codex Committee on General Principles—ALINORM 87/33, paras. 40–43 and 50–56.

[338] Unofficial translation submitted by FAO.

[339] *International Legal Materials,* 1972, vol. XI, p. 963.

[340] Ibid., 1983, vol. XXII, p. 698.

[341] UNESCO/WIPO/CGE/EA/4.

[342] UNESCO/WIPO/CGE/AWP/4.

[343] UNESCO/WIPO/CGE/WA/4.

[344] UNESCO/WIPO/CGE/VAR/4.

[345] See *Juridical Yearbook, 1978*, p. 201.

[346] The background to the Bank's sponsorship of MIGA's establishment and the negotiation of the MIGA Convention are described in the 1984 and 1985 editions of the *United Nations Juridical Yearbook*.

[347] The text of the MIGA Convention and of the official Commentary thereon are reproduced in 1 *ICSID Review—Foreign Investment Law Journal* 145 (1986).

[348] This resolution is reproduced in IBRD, IFC, IDA 1985 Annual Meetings of the Boards of Governors *Summary Proceedings* 244 (1986).

[349] The ICSID Convention is reproduced in *Juridical Yearbook, 1966*, p. 196.

[350] See "List of Contracting States and Signatories of the Convention", in document ICSID/3.

[351] The Geneva Tribunal's decision is reproduced in English translation in *ICSID Review—Foreign Investment Law Journal* 383 (1986).

[352] The decision of the Geneva Autorité is reproduced in 2 *ICSID Review—Foreign Investment Law Journal* 1970 (1987).

[353] See *Juridical Yearbook, 1984*, chap. III.B.6, para. (*b*) (v), p. 114.

[354] The decision of the Cour de cassation is reproduced in 2 *ICSID Review—Foreign Investment Law Journal* 182 (1987).

[355] See article 55 of the ICSID Convention.

[356] The above-mentioned two decisions of the United States District Court for the Southern District of New York are reprinted in 2 *ICSID Review—Foreign Investment Law Journal* 187, 188 (1987).

[357] Convention of the World Meteorological Organization, signed at Washington on 11 October 1947; United Nations, *Treaty Series*, vol. 77, p. 143.

[358] Resolution 37/IX.

[359] United Nations, *Treaty Series*, vol. 1059, p. 191. Article 4.3 provides that, in order to assure continuity of IFAD's operations, the Governing Council shall periodically review the adequacy of the resources available to IFAD and, if necessary, invite the members to make additional contributions to the resources of IFAD.

[360] Category I consists of: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Federal Republic of, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, United Kingdom and United States.

[361] Category II consists of: Algeria, Gabon, Indonesia, Iraq, Kuwait, Libyan Arab Jamahiriya, Nigeria, Qatar, Saudi Arabia, United Arab Emirates and Venezuela.

[362] HLIC 87/1/R.2, pp. 2–3 (1987).

[363] GC 10/L.8.

[364] The Committee consists of: for Category I: Belgium, Canada, France, Germany, Federal Republic of, Italy, Japan, the Netherlands, Norway, Sweden, Switzerland, United Kingdom and the United States; for Category II: Algeria, Gabon, Indonesia, Iran (Islamic Republic of), Iraq, Kuwait, Libyan Arab Jamahiriya, Nigeria, Qatar, Saudi Arabia, United Arab Emirates and Venezuela; and for Category III: Argentina, Cameroon, China, Colombia, Congo, Cuba, Ethiopia, India, Mexico, Thailand, Tunisia and Turkey.

[365] Paragraph I.3 of the resolution.

[366] GC 10/L.12/Add.1.

[367] EB 86/28/R.41.

[368] EB 86/28/R.47. A First Participation Arrangement with the Netherlands was approved at the twenty-third session of the Executive Board (documents EB/84/23/R.73 and EB/84/23/R.73/Add.1).

[369] Burundi (Integrated Rural Development Ngozi III), Rwanda (Byumba Rural Development Project), Madagascar (Highlands Rice Project), Indonesia (Seventeenth Irriga-

tion Project, East Java Province), Pakistan (Small Farmers' Credit II Project) and Pakistan (Gujranwala Agricultural Development Project).

[370] EB 86/28/R.47.

[371] Egypt (Minya Agricultural Development), Madagascar (Highland Rice) and Peru (Credit for Small Farmers on the Highlands).

[372] EB 86/29/R.72.

[373] IFAD annual report (1986), pp. 18–22.

[374] Collaborative Research Programme on Regional Farming Systems in the Near East and North Africa Region.

[375] Collaborative Research Programme on the Development of Rain-fed Production in Bangladesh and Eastern India.

[376] Resolutions 38/IX and 39/IX.

[377] IFAD annual report (1986), p. 49.

[378] See details on the SRS in *Juridical Yearbook, 1985,* review of activities of IFAD, chap. III.B, p. 106.

[379] IFAD annual report (1986), p. 13.

[380] The material reproduced herein, due to the continuity of legal issues connected with UNIDO's conversion to a specialized agency, covers both 1985 and 1986.

[381] General Assembly resolutions 2089 (XX) of 20 December 1965 and 2152 (XXI) of 17 November 1966.

[382] The General Assembly, in paragraph 6 of its resolution 34/96 of 13 December 1979, "Transitional arrangements relating to the establishment of the United Nations Industrial Development Organization as a specialized agency", decided to terminate the existing UNIDO at the end of the last day of the calendar year in which the General Conference of the new agency was first convened. The first General Conference was held in two parts, from 12 to 17 August and from 9 to 13 December 1985.

[383] Constitution of UNIDO, adopted on 8 April 1979 at the second session of the United Nations Conference on the Establishment of the UNIDO as a Specialized Agency (A/CONF.90/19). Article 21 of the Convention on legal capacity, privileges and immunities is reproduced in *Juridical Yearbook, 1985,* p. 26.

[384] General Assembly resolution 40/180 of 17 December 1985.

[385] See UNIDO/GC.1/INF.3.

[386] UNIDO/IDB.1/14 and Add.1.

[387] UNIDO/GC.1/7.

[388] UNIDO/GC.1/7/Add.1.

[389] GC.1/INF.6.

[390] IDB.2/2.

[391] GC.2/1.

[392] IDB.2/2/Add.1.

[393] GC.2/2.

[394] UNIDO/2.

[395] UNIDO/3.

[396] PBC.3/CRP.2.

[397] UNIDO/IDB.1/6.

[398] UNIDO/IDB.1/30.

[399] Protocol concerning the Entry into Force of the Agreement concerning the Relationship between the United Nations and the United Nations Industrial Development Organization, signed at New York on 29 May 1986.

[400] UNIDO/IDB.1/9, annex II.

[401] Exchange of letters of 3 and 18 October 1985.

[402] UNIDO/IDB.1/13, annex I.

[403] UNIDO/IDB.1/CRP.8 (as orally corrected in UNIDO/IDB.1/SR.20, para. 14).

[404] See IDB.2/1/Rev.1.

[405] UNIDO/DG/B.18.

[406] See E/1986/INF.7.

[407] UNIDO/DG/B.19.

[408] Letter of 19 December 1985.

[409] Letter of 27 March 1986.

[410] ILO documents GB.232/PFA/11/12, GB.232/7/29 and GB.232/PV(Rev.) (minutes of 232nd session of ILO Governing Body).

[411] Letter of 19 December 1985 with enclosed draft agreement.

[412] Special Agreement extending the jurisdiction of the Administrative Tribunal of the United Nations to the UNIDO, with respect to applications by staff members of UNIDO alleging non-observance of the regulations of the UNJSPF.

[413] See UNIDO/IDB.1/10/Add.1.

[414] Cable No. VIL 2777 of 16 December 1986.

[415] Letter from the Secretary of the UNJSPF of 20 December 1985 to the Director-General of UNIDO.

[416] Letter of reply from the Director-General of UNIDO dated 31 December 1985 to the Secretary of the UNJSPF.

[417] General Assembly resolution 40/245 of 18 December 1985.

[418] Exchange of cables between the Director-General of UNIDO and the Secretary-General of the United Nations of 6 and 9 November 1985 respectively.

[419] Agreement between the United Nations and UNIDO for the Transfer, Secondment and Loan of Staff (see UNIDO/ADM/PS/INF.1018).

[420] IDB.2/4.

[421] UNIDO/IDB.1/25.

[422] PBC.2/3.

[423] A/38/141.

[424] UNIDO/IDB.1/24.

[425] IDB.2/32.

[426] List of exchanges of letters of 20 December 1985.

[427] Two letters from the Secretary General for Foreign Affairs of Austria of 15 July 1986 to the Director-General of UNIDO.

[428] United Nations, *Treaty Series,* vol. 276, p. 3.

[429] Reproduced in IAEA document INFCIRC/274/Rev.1.

[430] United Kingdom Command Paper No. 7994. Switzerland deposited its instrument of ratification with the Director General of IAEA on 9 January 1987. The Convention, which required 21 ratifications or acceptances for its entry into force, accordingly entered into force on 8 February 1987 pursuant to article 19.1.

[431] IAEA Safety Series No. 9, 1982 ed., Vienna, 1982.

[432] Reproduced in IAEA document INFCIRC/335.

[433] Reproduced in IAEA document INFCIRC/336.

[434] The Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency entered into force on 26 February 1987, 30 days after a third State had expressed consent to be bound by it on 26 January 1987.

[435] Reproduced in IAEA document INFCIRC/167. The RCA First and Second Extension Agreements have been reproduced in IAEA documents INFCIRC/167/Add.8 and Add.11 respectively.

[436] Reproduced in IAEA document INFCIRC/343.