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UNITED NATIONS JURIDICAL YEARBOOK

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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 LEGAL ACTIVITIES 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) Approaches and trends in multilateral disarmament

(i) *Role of the United Nations in the field of disarmament*

In 1990 the role of the United Nations in the field of disarmament was a prominent issue in the deliberations in both the Disarmament Commission and the General Assembly. By its resolution 45/62 A of 4 December 1990,¹ the General Assembly adopted the text of the Declaration of the 1990s as the Third Disarmament Decade. The Disarmament Commission also completed its consideration of the item "Review of the role of the United Nations in the field of disarmament"² and produced a text on the subject that was commended by the General Assembly in its resolution 45/62 B of 4 December 1990.³ By the same resolution the Assembly noted with satisfaction that the Disarmament Commission had adopted by consensus a set of "Ways and means to enhance the functioning of the Disarmament Commission"⁴ at its 1990 substantive session.

The issue of verification of and compliance with arms limitation and disarmament agreements and, in particular, the role of the United Nations in the verification of such agreements continued to receive earnest consideration. By its resolution 45/65 of 4 December 1990,⁵ the Assembly welcomed the report of the Secretary-General on the subject,⁶ noting that the report had been approved by the Group of Qualified Governmental Experts to Undertake a Study on the Role of the United Nations in the Field of Verification.

Political considerations reflecting ongoing positive changes in international relations as well as the rationalization of the work of the First Committee found their expression in new trends in the work of that Committee. The Committee succeeded, in some degree, in its efforts to stop the proliferation of decisions on disarmament matters; the number of decisions adopted in 1990 was the lowest in eight years, while the proportion of those adopted without a vote was the highest.

(ii) *The qualitative arms race; proliferation of advanced technologies*

During 1990 the discussions which took place in different disarmament forums revealed the need for thorough consideration of such issues as: globalization of technology; prevention of the proliferation of highly destabilizing weapons and related technology; national policy on research and development and technology assessment;

exchange of data and confidence-building measures; and the role of the United Nations in this field. In dealing with these matters the General Assembly adopted two resolutions. By its resolution 45/60 of 4 December 1990,⁷ it took note of the report of the Secretary-General entitled "Scientific and technological developments and their impact on international security,"⁸ and by resolution 45/61 of the same date⁹ it welcomed national and international activities to use scientific and technological achievements for disarmament-related purposes.

(iii) *Question of general and complete disarmament: the comprehensive programme of disarmament*

In 1990, in continuation of the trend of most of the 1980s, efforts towards and achievement of specific arms regulation and reduction measures dominated the overall disarmament scene, once again reducing emphasis on the comprehensive approach. Therefore, resolution 45/62 E of 4 December 1990,¹⁰ in which the General Assembly specifically requested the Conference on Disarmament to re-establish, at the beginning of its 1991 session, the Ad Hoc Committee on the Comprehensive Programme of Disarmament, was adopted with less support than had been given to the corresponding resolution of 1989, in which the Assembly had called upon the Conference only "to consider" such action. The Assembly recommended that the Ad Hoc Committee continue its work, building on the texts already agreed to, with the view to resolving the outstanding issues and thus concluding negotiations on it.

(b) Nuclear disarmament

(i) *Nuclear-arms limitation and disarmament; prevention of nuclear war*

In 1990 a total of eight resolutions dealing with the questions of nuclear-arms limitation and disarmament and the prevention of nuclear war were approved by the First Committee and adopted on 4 December 1990 by the General Assembly. Once again the Assembly underscored the special responsibility of the two major Powers for nuclear disarmament and, at the same time, reaffirmed that bilateral and multilateral negotiations on nuclear disarmament should complement each other. Two distinct resolutions (45/58 B¹¹ and 45/58 H¹²) were adopted on bilateral nuclear-arms negotiations, neither by consensus. In its resolution 45/58 D,¹³ the General Assembly welcomed the continued implementation of the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter-Range Missiles and the negotiations between those States on the reduction of their nuclear arsenals and the progress made in those negotiations and urged them further to discharge their special responsibility for nuclear disarmament. Furthermore, by its resolution 45/62 C,¹⁴ the Assembly expressed its belief that efforts should be intensified in order to initiate multilateral negotiations in accordance with the provisions of paragraph 50 of the Final Document of the Tenth Special Session of the General Assembly;¹⁵ reiterated that, in view of the importance of the matter, it was equally necessary to devise suitable steps to expedite effective action for the prevention of nuclear war; and requested the Conference on Disarmament to establish ad hoc committees at the beginning of its 1991 session on both the cessation of the nuclear-arms race and nuclear disarmament and the prevention of nuclear war with adequate mandates in order to allow a structured and practical analysis of how the Conference could best contribute to progress on those two urgent matters.

By its resolution 45/59 D,¹⁶ the General Assembly urged both the Union of Soviet Socialist Republics and the United States of America to reach agreement on an immediate nuclear-arms freeze, 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; and called upon all nuclear-weapon States to agree, through a joint declaration, to a comprehensive nuclear-arms freeze. And by its resolution 45/58 L,¹⁷ the Assembly requested the Conference on Disarmament, at an appropriate stage of its work on the item entitled "Nuclear weapons in all aspects," to pursue its consideration of the question of adequately verified cessation and prohibition of the production of fissionable material for nuclear weapons and other nuclear explosive devices.

Moreover, by its resolution 45/59 B,¹⁸ the General 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. And by its resolution 45/58 E,¹⁹ the Assembly took note of the comprehensive study on nuclear weapons contained in the report of the Secretary-General²⁰ and commended the study and its conclusions to the attention of all Member States.

(ii) *Fourth Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons*

The Fourth Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons²¹ was held at Geneva from 20 August to 14 September 1990. In all, 84 States parties to the Treaty took part in the Conference. The improvement in the international climate and the conclusion and implementation of the first agreement on the elimination of a whole category of nuclear weapons, as well as some other arms limitation agreements, did not prove sufficient to bridge the gap, which had existed from the beginning, between the nuclear and non-nuclear-weapon States parties to the Treaty. Once more the differences in assessment of the implementation of article VI, especially in regard to progress in reaching a comprehensive test-ban treaty, could not be resolved. As a result the Review Conference was unable to reach consensus on a substantive final declaration. However, in spite of the lack of a final declaration, the Conference proved useful in providing an opportunity to assess the operation of the Treaty and to confirm the readiness of virtually all States to continue to support the non-proliferation regime, of which the Treaty was the central element. Among the specific results of the Conference that were not formalized by the adoption of a final declaration, the most important was the agreement that the nuclear supplier States should require of non-nuclear-weapon recipients, as a condition for any nuclear supplies, a commitment that they would accept safeguards on all their nuclear activities.

No draft resolution concerning the Non-Proliferation Treaty or the Review Conference was called for in the General Assembly in 1990, and none was put forward. However, various resolutions on questions of nuclear disarmament connected with the objectives espoused by the Treaty were adopted.

(iii) *Cessation of all nuclear-test explosives*

In 1990 positions of the nuclear-weapon States on the question of cessation of nuclear-test explosions had not changed fundamentally from those of previous years.

However, the Conference on Disarmament, reaching consensus on a non-negotiating mandate for the Ad Hoc Committee on a test ban, represented an important breakthrough for that question.

The General Assembly adopted on 4 December 1990 two traditional resolutions on the test-ban issue. By its resolution 45/49,²² the Assembly reaffirmed its conviction that a treaty to achieve the prohibition of all nuclear-test explosions by all States for all time was a matter of the highest priority and urged once more all nuclear-weapon States, in particular the three depositary States of the Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space and under Water²³ and of the Treaty on the Non-Proliferation of Nuclear Weapons, to seek to achieve the early discontinuance of all test explosions of nuclear weapons for all time and to expedite negotiations to that end. By its resolution 45/51,²⁴ the Assembly urged the Conference on Disarmament, in order that a comprehensive nuclear-test-ban treaty might be concluded at an early date, to re-establish the Ad Hoc Committee on a Nuclear Test Ban at the beginning of its 1991 session to carry forward the work begun in the Conference in 1990, focusing on substantive work on specific and interrelated test-ban issues, including structure and scope as well as verification and compliance; urged the nuclear-weapon States, especially those which possessed the most important nuclear arsenals, to agree promptly to appropriate verifiable and militarily significant interim measures, with a view to concluding a comprehensive nuclear-test-ban treaty; and urged those nuclear-weapon States which had not yet done so to adhere to the partial test-ban Treaty. Furthermore, by its resolution 45/50,²⁵ also of 4 December 1990, the General Assembly called upon all parties to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water to participate in, and contribute to the success of, the Amendment Conference of the States parties to the Treaty, to be held in New York from 7 to 18 January 1991, for the achievement of a comprehensive nuclear-test ban at an early date, as an indispensable measure towards implementation of their undertakings in the preamble to the Treaty; and reiterated its conviction that, pending the conclusion of a comprehensive nuclear-test-ban treaty, the nuclear-weapon States should suspend all nuclear-test explosions through an agreed moratorium or unilateral moratoria.

(iv) *Effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons*

The work on security assurances in the Conference on Disarmament once again offered little evidence of tangible progress. Basically, the nuclear-weapon States maintained their established positions on the issue and upheld their existing unilateral assurances.

In the General Assembly, the two traditional competing agenda items and draft resolutions on the question had been replaced by one resolution, resolution 45/54 of 4 December 1990,²⁶ adopted by an overwhelming majority vote. By that resolution, the General Assembly reaffirmed the urgent need to reach an early agreement on effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons; 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, although the difficulties as regards evolving a common approach acceptable to all had also been pointed out; and appealed to all States, especially the nuclear-weapon States, to demonstrate the political will and flexibility necessary to reach

agreement on a common approach and, in particular, on a common formula that could be included in an international instrument of a legally binding character.

(v) *Nuclear-weapon-free zones and zones of peace*

The strengthening of existing nuclear-weapon-free zones and the establishment of new zones in various regions of the world continued to be supported in the Disarmament Commission and at the forty-fifth session of the General Assembly, as well as at the Fourth Review Conference of the Non-Proliferation Treaty. Although there were no significant developments in 1990 regarding nuclear-weapon-free zones and while there were some negative developments concerning the implementation of the Declaration on the Indian Ocean as a Zone of Peace (the withdrawal of France, the United Kingdom of Great Britain and Northern Ireland and the United States of America from the Ad Hoc Committee on the Indian Ocean), it was felt that the improved political atmosphere, the various sets of ongoing negotiations on disarmament and the steps that had been taken or were being taken to solve some regional crises and conflicts might contribute to tangible progress in that area in the future.

*Treaty for the Prohibition of Nuclear Weapons in Latin America
(Treaty of Tlatelolco)*²⁷

By resolution 45/48 of 4 December 1991,²⁸ the General Assembly once more urged France not to delay any further the ratification of Additional Protocol I of the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco), which had been requested so many times and 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 45/56 A of 4 December 1990,²⁹ the General Assembly reaffirmed that the implementation of the Declaration on the Denuclearization of Africa adopted by the Assembly of 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; called upon all States, corporations, institutions and individuals to desist from further collaboration with the racist regime of South Africa that might enable it to frustrate the objective of the Declaration; demanded once again that the racist regime refrain from manufacturing, testing, deploying, transporting, storing, using or threatening to use nuclear weapons; and also demanded that South Africa submit forthwith all its nuclear installations and facilities to inspection by the International Atomic Energy Agency.

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

By its resolution 45/52 of 4 December 1990,³⁰ 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 their nuclear activities under International Atomic Energy Agency safeguards; invited all countries of the region to declare their support for establishing such a zone, consistent with paragraph 63 (d) of the Final Document

of the Tenth Special Session of the General Assembly,³¹ and to deposit those declarations with the Security Council; and also invited them 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. Moreover, by its resolution 45/63 of 4 December 1990,³² the Assembly reiterated its condemnation of Israel's refusal to renounce any possession of nuclear weapons; reaffirmed that Israel should promptly apply Security Council resolution 487 (1981), in which the Council, *inter alia*, requested it to place all nuclear facilities under International Atomic Energy Agency safeguards and to refrain from attacking or threatening to attack nuclear facilities; and called upon all States and organizations that had not yet done so not to cooperate with or give assistance to Israel that could enhance its nuclear-weapons capability.

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

By its resolution 45/53 of 4 December 1990,³³ the General Assembly reaffirmed its endorsement, in principle, of the concept of a nuclear-weapon-free zone in South Asia; urged once again the States of South Asia to continue to make all possible efforts to establish such a zone and to refrain, in the meantime, from any action contrary to that objective; and called upon those nuclear-weapon States that had not done so to respond positively to that proposal and to extend the necessary cooperation in the efforts to establish a nuclear-weapon-free zone in South Asia.

Implementation of the Declaration of the Indian Ocean as a Zone of Peace³⁴

By its resolution 45/77 of 12 December 1990,³⁵ the General Assembly reaffirmed full support for the achievement of the objectives of the Declaration of the Indian Ocean as a Zone of Peace; reiterated and emphasized its decision to convene the Conference on the Indian Ocean at Colombo, as a necessary step for the implementation of the Declaration; and renewed the mandate of the Ad Hoc Committee on the Indian Ocean as defined in the relevant resolutions, and requested the Committee to intensify its work with regard to the implementation of its mandate.

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

Promoting the peaceful uses of nuclear energy and safeguarding the non-proliferation regime, areas in which the International Atomic Energy Agency continued to play an indispensable role, were dominant concerns of the international community in 1990. IAEA's safeguards covered 95 per cent of all nuclear installations in non-nuclear-weapon States. Nuclear material under IAEA safeguards remained in peaceful nuclear activities or was otherwise adequately accounted for.

By its resolution 45/7 of 23 October 1990,³⁶ 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 in promoting the use of nuclear energy and the application of measures to strengthen the safety of nuclear installations, in strengthening technical assistance and cooperation for developing countries and in ensuring the effectiveness and efficiency of the Agency's safeguards system.

(c) Prohibition or restriction of use of other weapons

(i) *Chemical and bacteriological (biological) weapons*

In the Conference on Disarmament, negotiations on chemical weapons continued on specific problem areas, in particular verification, technical, legal and institutional

issues, and agreement was reached on a number of questions of a technical nature. Despite the expectations raised by the Agreement between the United States and the Soviet Union on the destruction and non-production of chemical weapons and on measures to facilitate the multilateral convention on banning chemical weapons,³⁷ little progress was achieved in the multilateral negotiations. As in the previous year, the General Assembly adopted on 4 December 1990 three consensus resolutions on the subject.

By its resolution 45/57 A, the General Assembly renewed its call to all States to observe strictly the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925,³⁸ and to abide by the commitments undertaken in the Final Declaration of the Conference of the States Parties to the 1925 Geneva Protocol and Other Interested States, held in Paris from 7 to 11 January 1989; expressed its regret and concern that a convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction had not yet been concluded; and strongly urged the Conference on Disarmament, as a matter of highest priority, to intensify during its 1991 session its efforts to resolve outstanding issues, and to conclude its negotiations on a convention, and to re-establish its Ad Hoc Committee on Chemical Weapons for that purpose. And by its resolution 45/57 C, the Assembly endorsed the proposals of the group of qualified experts established in pursuance of its resolution 42/37 C of 30 November 1987 concerning technical guidelines and procedures to guide the Secretary-General in the conduct of timely and efficient investigation of the reports of use of chemical and bacteriological (biological) or toxin weapons, and noted the continuing significance of the Security Council decision to consider immediately, taking into account the investigations of the Secretary-General, appropriate and effective measures in accordance with the Charter of the United Nations, should there be any future use of chemical weapons in violation of international law. Additionally, by its resolution 45/57 B, the General Assembly noted that, at the request of the States parties, a Third 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 would be held at Geneva in 1991; and recalled in that regard the decision taken at the Second Review Conference that the Third Review Conference should consider, *inter alia*, the issues set out in article XII of the Final Declaration of the Second Review Conference.

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

In 1990, the question of the prevention of an arms race in outer space continued to be a focus of attention within the United Nations. The majority of States continued to consider that bilateral and multilateral efforts were complementary and they urged immediate negotiations on the subject in the Conference on Disarmament.

By its resolution 45/55 A of 4 December 1990,³⁹ the General Assembly urged the Soviet Union and the United States to pursue intensively their bilateral negotiations in a constructive spirit with a view to reaching early agreement for preventing an arms race in outer space; recognized the relevance of considering measures on confidence-building and greater transparency and openness in space; and requested the Conference on Disarmament to re-establish an ad hoc committee with an adequate mandate at the beginning of its 1991 session and to continue building upon areas of convergence 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.

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

As at previous sessions, the question of the prohibition of the development and manufacture of new types of weapons of mass destruction attracted little attention in the deliberations of the disarmament bodies in 1990, owing to the fact that differences of view concerning the imminence of the emergence of such weapons persisted. However, an agreement was reached to request the Conference on Disarmament to keep under review the question of the prohibition of the development and manufacture of new types of weapons of mass destruction and new systems of such weapons, and General Assembly resolution 45/66 of 4 December 1990 on the subject was adopted.⁴⁰

The prohibition of radiological weapons was again addressed in the Conference on Disarmament and in the General Assembly. By its resolution 45/58 F of 4 December 1990,⁴¹ the General Assembly requested the Conference on Disarmament to continue its substantive negotiation on the prohibition of development, production, stockpiling and use of radiological weapons, with a view to the prompt conclusion of its work. With respect to the prohibition of attacks on nuclear facilities, the General Assembly by its resolution 45/58 J, also of 4 December 1990,⁴² recognized that an armed attack or threat of armed attack on a safeguarded nuclear facility, operational or under construction, would create a situation in which the Security Council would have to act immediately in accordance with the provisions of the Charter of the United Nations, including measures under Chapter VII; encouraged all States to be ready to provide immediate peaceful assistance in accordance with international law to any State, if it so requested, whose safeguarded nuclear facilities had been subjected to an armed attack; and called upon all States that had not done so to become parties to Additional Protocol I of 1977 to the Geneva Conventions of 12 August 1949 and upon all States parties to that Protocol to consider, in the context of a possible diplomatic conference, how to improve the existing regime with regard to the protection of nuclear facilities.

In addition, by its resolution 45/58 K of the same date,⁴³ the General Assembly expressed grave concern regarding any use of nuclear waste that would constitute radiological warfare and have grave implications for the national security of all States; called upon all States to take appropriate measures with a view to preventing any dumping of nuclear wastes that would infringe upon the sovereignty of States; requested the Conference on Disarmament to continue to take into account, in the ongoing negotiations for a convention on the prohibition of radiological weapons, the deliberate employment of nuclear wastes to cause destruction, damage or injury by means of radiation produced by the decay of such material; and requested the International Atomic Energy Agency to continue keeping the subject under active consideration and to intensify efforts to conclude a legally binding instrument under its auspices on the effective prohibition of any dumping of radioactive or nuclear wastes to complement a multilateral convention on its prohibition in the Conference on Disarmament.

(d) *Conventional disarmament and other approaches*

(i) *Conventional weapons*

Following a trend apparent in the latter half of the 1980s, questions on the conventional aspects of the arms race and conventional disarmament were discussed with increased emphasis in 1990. The most noteworthy development in the United Nations forums pertaining to conventional disarmament was the successful conclusion by the Disarmament Commission of its work on a broad range of guidelines, agreed upon by

consensus, on how the international community might best approach and deal with conventional disarmament.⁴⁴ Three draft resolutions and one decision relating to conventional disarmament were adopted by the General Assembly on 4 December 1990.⁴⁵

By its resolutions 45/58 C and 45/58 G, the General Assembly reaffirmed the importance of conventional disarmament and encouraged States to intensify their efforts in that connection, and also endorsed and called the attention of States to the agreed recommendations of the Disarmament Commission. In addition to urging wider adherence 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 of 1980,⁴⁶ the Assembly, in its resolution 45/64, stressed that the Convention provided for the convening of conferences to consider amendments or additional protocols relating to other categories of weapons, or to review the scope and operation of the Convention and the Protocols annexed thereto. Furthermore, decision 45/415 ensured that the ongoing study report of the group of governmental experts to consider aspects of international arms transfers⁴⁷ would be given due attention.

(ii) *Regional disarmament and confidence- and security-building measures*

Considerable progress was made in regional disarmament efforts with regard to conventional armaments and the improvement of confidence-building measures in Europe in the course of 1990. The Treaty on Conventional Armed Forces in Europe⁴⁸ was signed by the 22 States members of the two military alliances in November in Paris. In another framework encompassing 34 States participating in the Conference on Security and Cooperation in Europe, a new set of mutually complementary confidence- and security-building measures, designed to reduce the risk of military confrontation in Europe, was adopted as the Vienna Document 1990,⁴⁹ also in November.

Enhanced interest in regional arms limitation and confidence-building measures was also in evidence in other regions. In Central America, for example, the peace process continued in the form of the activities of the Security Commission established under the Esquipulas II Agreements.⁵⁰

At its forty-fifth session, the General Assembly adopted on 4 December 1990 six resolutions and two decisions on the subject of regional disarmament and/or confidence-building measures, including the related areas of naval disarmament and defensive security concepts.⁵¹

2. OTHER POLITICAL AND SECURITY QUESTIONS

(a) Implementation of the Declaration on the Strengthening of International Security⁵²

In its resolution 45/80 of 12 December 1990,⁵³ adopted on the recommendation of the First Committee,⁵⁴ the General Assembly reaffirmed the continuing validity of the Declaration on the Strengthening of International Security; stressed the need for further strengthening of the role of the United Nations in the maintenance of peace and security and promoting respect for international law, as well as in economic and

social development and progress for the benefit of mankind; welcomed the recent active involvement of the Security Council, in pursuance of its primary responsibility in the maintenance of international peace and security, and expressed the hope that it would continue in that spirit to address other threats to international peace and security; emphasized that the sustained growth and development of the world economy, particularly that of the developing countries, and the solution of their economic problems, were basic prerequisites for the strengthening of international peace and security; and considered that respect for and promotion of human rights and fundamental freedoms in all aspects and the strengthening of international peace and security 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-ninth session at the United Nations Office at Geneva from 2 to 20 April 1990.⁵⁵

In continuing its consideration of the agenda item entitled "The elaboration of draft principles relevant to the use of nuclear power sources in outer space", the Legal Subcommittee re-established its Working Group on the item. The Subcommittee had before it a working paper submitted at its previous session by the delegation of Canada⁵⁶ and a working paper submitted at its current session by the delegations of Canada, the Federal Republic of Germany and France.⁵⁷ The Working Group concentrated on those draft principles where consensus had not been recorded. The Subcommittee, taking note with appreciation of the report of the Working Group, expressed particular satisfaction that principle 3 relating to guidelines and criteria for safe use had been unanimously agreed to by the Working Group at the current session.

The Subcommittee also re-established its Working Group on the agenda item "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. The Subcommittee had before it working papers submitted at its previous sessions. The Group considered the 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, separately.

The Subcommittee re-established as well its Working Group on the item "Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries". The Subcommittee had before it the replies received⁵⁸ from States Members of the United Nations containing their views as to the priority of specific subjects under that particular agenda item and providing information on their national legal frameworks, if any, relating to the development of the application of the principle contained in article 1 of the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. The Subcommittee also had before it replies received⁵⁹ from the Member States containing their views on the subject of international agreements that Member States had entered into that were relevant to the principle that the exploration and use of outer space should be carried out for the benefit and in the interests of all countries, taking into particular account the needs of developing countries.

The Committee on the Peaceful Uses of Outer Space at its thirty-third session, held at United Nations Headquarters from 4 to 14 June 1990, took note with appreciation of the report of the Legal Subcommittee on the work of its twenty-ninth session and made recommendations concerning the agenda of the Subcommittee at its thirtieth session.⁶⁰

With regard to the item entitled "The elaboration of the draft principles relevant to the use of nuclear power sources in outer space", the Committee urged the Legal Subcommittee to make every effort in its work on the elaboration of the outstanding draft principles in order to arrive at a final text of draft principles relevant to the use of nuclear power sources in outer space as early as possible.

Regarding the agenda of the Legal Subcommittee, the Committee recommended that the Subcommittee at its thirtieth session should continue the work on its current agenda items.

The Committee also considered, in accordance with paragraph 27 of General Assembly resolution 44/46 of 8 December 1989, the item entitled "Spin-off benefits of space technology: review of current status". The Committee agreed that spin-offs of space technology were yielding substantial benefits in many fields and noted that the importance of those benefits was growing rapidly. Furthermore, the Committee recommended that the Outer Space Affairs Division undertake a study of spin-offs and that space agencies in Member States might specifically consider the allocation of a small portion of their resources to encourage spin-off applications of space technology through technology transfer and exchange of technical information on promotional terms to developing countries.

At its forty-fifth session, by resolution 45/72 of 11 December 1990,⁶¹ adopted on the recommendation of the Special Political Committee,⁶² 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 the uses of outer space⁶³ to give consideration to ratifying or acceding to those treaties; and endorsed the recommendations of the Committee that the Legal Subcommittee, at its thirtieth session, should continue, through its working group, the elaboration of draft principles relevant to the use of nuclear power sources in outer space with the aim of finalizing the draft set of principles; 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 its consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries.

(c) Question of Antarctica

By its resolution 45/78 A of 12 December 1990,⁶⁴ adopted on the recommendation of the First Committee,⁶⁵ the General Assembly expressed its regret that, despite the numerous resolutions adopted by the General Assembly, the Secretary-General of the United Nations or his representative had not been invited to the meetings of the Antarctic Treaty Consultative Parties; called upon the Consultative Parties to deposit information and documents covering all aspects of Antarctica with the Secretary-Gen-

eral; expressed the conviction that any move to draw up a comprehensive environmental convention on the conservation and protection of Antarctica and its dependent and associated ecosystems as well as establishing a nature reserve or world park must be negotiated with the full participation of the international community, and in this regard stressed that this should be pursued within the context of the United Nations system, including the United Nations Conference on Environment and Development; and requested the Secretary-General to undertake a comprehensive study with the help of relevant United Nations programmes and specialized agencies on the establishment of a United Nations-sponsored station in Antarctica with a view to promoting coordinated international cooperation in scientific research for the benefit of mankind, particularly the importance of Antarctica to the global environment and ecosystems, as well as to act as an early-warning system on climate change and accidents. Furthermore, by its resolution 45/78 B⁶⁶ of the same date, adopted also on the recommendation of the First Committee,⁶⁷ the Assembly viewed with concern the continuing participation of the apartheid regime of South Africa in the meetings of the Antarctic Treaty Consultative Parties and appealed once again to the Consultative Parties to take urgent measures to exclude the racist apartheid regime from participation in the meetings of the Consultative Parties at the earliest possible date.

3. ENVIRONMENTAL, ECONOMIC, SOCIAL, HUMANITARIAN AND CULTURAL QUESTIONS

(a) Environmental questions

Second special session of the Governing Council of the United Nations Environment Programme⁶⁸

The second special session of the Governing Council of the United Nations Environment Programme was held at UNEP headquarters, Nairobi, from 1 to 3 August 1990. It was convened at the same location as, and in conjunction with, the first substantive session of the Preparatory Committee for the United Nations Conference on Environment and Development to deal with, *inter alia*, the elaboration of and the process of making and implementing decisions on priority environmental issues, in particular ways and means of enhancing the role of the Programme within the United Nations system in addressing those issues.

By its decision SS.II/2,⁶⁹ entitled “New developments in the protection of the ozone layer”, the Governing Council welcomed the results of the Second Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer — in particular the decisions taken to strengthen the Protocol, the establishment of a financial mechanism to enable developing countries to comply with the control measures of the Protocol and the progress made in respect of transfer of technology — and urged all States that had not yet done so to become party to the Vienna Convention for the Protection of the Ozone Layer⁷⁰ and the Montreal Protocol on Substances that Deplete the Ozone Layer.⁷¹ By its decision SS.II/3,⁶⁹ entitled “Climate”, section C (Framework convention on climate change), the Governing Council authorized the Executive Director to convene, jointly with the Secretary-General of the World Meteorological Organization, an open-ended working group of government representatives to prepare

for negotiations on a framework convention on climate change, in September 1990, after the adoption of the interim report on the Intergovernmental Panel on Climate Change at its fourth session, to be held in Sweden; and requested the Executive Director to convene jointly with the Secretary-General of WMO the first negotiating session of the open-ended working group on the framework convention on climate change, and other related legal instruments as appropriate, and taking into account the interim report of the Intergovernmental Panel on Climate Change and the results of the Second World Climate Conference. That session should be held not later than February 1991. By its decision SS.II/4,⁶⁹ entitled "Hazardous wastes", section A (Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal),⁷² the Governing Council, having considered those sections of the report of the Executive Director on priority evolving environmental issues concerning hazardous wastes and, in particular, the status of the Basel Convention and contributions to the costs of its interim secretariat,⁷³ called upon all States to sign and ratify the Basel Convention, if they had not already done so, and to continue to strengthen their cooperation in problem areas within the scope of the Convention. Furthermore, by its decision SS.II/5,⁶⁹ entitled "International legal instrument on the biological diversity of the planet", the Council, recalling its decision 15/34 of 25 May 1989 on the preparation of an international legal instrument on the biological diversity of the planet, urged the Executive Director to accord high priority to the work on biological diversity and biotechnology with a view to arriving at an international legal instrument for the conservation and rational use of biological diversity within a broad socio-economic context, taking particular account of the need to share costs and benefits between developed and developing countries and ways and means to support innovation by local people, and, to that end, called upon the Ad Hoc Working Group of Legal and Technical Experts established for that purpose to proceed expeditiously with its task on the basis of the final report of the Ad Hoc Working Group of Experts on Biological Diversity.

The Council also adopted a number of decisions concerning issues to be addressed by the Preparatory Committee for the United Nations Conference on Environment and Development.⁶⁹

First session of the Preparatory Committee for the United Nations Conference on Environment and Development⁷⁴

The Preparatory Committee for the United Nations Conference on Environment and Development held its first substantive session at Nairobi from 6 to 31 August 1990. Decisions adopted by the Committee⁷⁵ included decisions related to legal matters. In particular, by its decision 1/11, entitled "Climate change", the Preparatory Committee requested the Secretary-General of the Conference to make recommendations concerning the contribution of the Preparatory Committee to the negotiating process for a framework convention on climate change and related legal instruments. By its decision 1/12, entitled "Ozone depletion", the Preparatory Committee requested the secretariat of the Conference to cooperate with the United Nations Environment Programme and the World Meteorological Organization in evaluating the need for any additional action to be taken by the Preparatory Committee to support the ongoing work within the framework of the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer. By its decision 1/14, entitled "Combating deforestation", the Preparatory Committee recommended that discussions on the protection and sustainable management of boreal, temperate, subtropical and tropical forest ecosystems be well coordinated and compat-

ible with other possible types of action related to the reduction of emissions of greenhouse gases, protection of biological diversity, rational utilization of biological resources and improvement of market conditions for timber and timber products that might be taken by the Food and Agriculture Organization of the United Nations, the United Nations Environment Programme, the World Meteorological Organization and the International Tropical Timber Organization in connection with conventions on climate change and on biological diversity and other relevant agreements.

By its decision 1/16, entitled "Conservation of biological diversity", the Preparatory Committee requested the Secretary-General of the Conference to follow closely the work of the Ad Hoc Working Group of Experts on Biological Diversity, established under the auspices of UNEP, on the negotiations of an international legal instrument on biological diversity concerning the protection of biological diversity and the rational use of biological resources within a broad socio-economic context, including the work of the Sub-Working Group on Biotechnology, as well as the relevant work of FAO, UNESCO, the International Union for Conservation of Nature and Natural Resources and other intergovernmental and non-governmental organizations. By its decision 1/20, entitled "Protection of the oceans and all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources", the Preparatory Committee:

(1) requested the Secretary-General of the Conference to submit to the Preparatory Committee at its second session a comprehensive report with recommendations for action covering, *inter alia*, the following areas: the effectiveness and feasible strengthening of existing international institutions, the effectiveness and status of implementation of existing legal instruments and the identification of gaps in existing mechanisms for the protection of the marine environment; the effectiveness of existing international institutions, the effectiveness and status of implementation of existing legal instruments and the identification within appropriate forums of gaps in existing mechanisms for the protection, rational use and development of living marine resources, including the living resources of the high seas, taking into account the results of the 1984 World Conference of Fisheries Management and Development as well as the Third United Nations Conference on the Law of the Sea; and

(2) invited IMO, in cooperation with the States parties to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter,⁷⁶ to consider initiating work to strengthen the regime curbing dumping at sea, taking into consideration all relevant paragraphs of the Bergen Ministerial Declaration on Sustainable Development in the ECE region⁷⁷ and the outcome of the deliberations of the other regional commissions due to hold regional conferences in preparation for the United Nations Conference on Environment and Development.

By its decision 1/22, entitled "Environmentally sound management of wastes, particularly hazardous wastes, environmentally sound management of toxic chemicals and prevention of illegal international traffic in toxic and dangerous products and wastes", the Preparatory Committee requested the Secretary-General of the Conference to submit to the Preparatory Committee at its second session a progress report with recommendations for action covering, *inter alia*, the following areas: measures to strengthen international, regional and subregional cooperation, taking account, *inter alia*, of the relevant provisions of the Basel Convention on the Transboundary Movement of Hazardous Wastes and their Disposal, including exchange of information, training and technical assistance, in particular to developing countries, and measures to encourage, where appropriate, harmonization of standards for waste disposal;

review and analysis of problems encountered in the ratification of the Basel Convention and measures to be taken to solve those problems; and the possible development of a mechanism for management of chemicals similar to the Codex Alimentarius.

Consideration by the General Assembly

At its forty-fifth session the General Assembly, by its resolution 45/211 of 21 December 1990,⁷⁸ adopted on the recommendation of the Second Committee,⁷⁹ took note of the report of the Preparatory Committee on its first session and endorsed the decisions contained therein;⁸⁰ decided that the United Nations Conference on Environment and Development should take place at Rio de Janeiro, Brazil, from 1 to 12 June 1992; urged that representation at the Conference be at the level of head of State or Government; and reiterated that the Preparatory Committee should review and assess ongoing negotiating processes in the field of the environment, and invited the forums involved in such processes to report regularly on their activities to the Preparatory Committee at its forthcoming sessions.

Furthermore, by its resolution 45/212 of the same date,⁸¹ adopted also on the recommendation of the Second Committee,⁸² the General Assembly decided to establish a single intergovernmental negotiating process under the auspices of the General Assembly, supported by the United Nations Environment Programme and the World Meteorological Organization, for the preparation by the Intergovernmental Negotiating Committee of an effective framework convention on climate change, containing appropriate commitments, and any related instruments as might be agreed upon, taking into account proposals that might be submitted by States participating in the negotiating process, the work of the Intergovernmental Panel on Climate Change and the results achieved at international meetings on the subject, including the Second World Climate Conference; and considered that the negotiations for the preparation of an effective framework convention on climate change should be completed prior to the United Nations Conference on Environment and Development and opened for signature during the Conference.

(b) International code of conduct on the transfer of technology

By its resolution 45/204 of 21 December 1990,⁸³ adopted on the recommendation of the Second Committee⁸⁴ the General Assembly took note of the report of the Secretary-General of the United Nations Conference on Trade and Development on the negotiations on a draft international code of conduct on the transfer of technology.⁸⁵

(c) Code of conduct on transnational corporations

By its resolution 45/186 of 21 December 1990,⁸⁶ adopted on the recommendation of the Second Committee,⁸⁷ the General Assembly confirming that there was substantial provisional understanding on the contents of the draft code of conduct on transnational corporations as presented to the President of the Economic and Social Council by the Chairman of the Commission on Transnational Corporations at its reconvened special session,⁸⁸ decided to request the President of the General Assembly, with the support of the Secretary-General, to arrange for intensive consultations aimed at achieving an early agreement on a code of conduct, for presentation to and adoption by the Assembly at its forty-sixth session.

(d) Office of the United Nations High Commissioner for Refugees⁸⁹

During the reporting period phenomenal and very rapid developments in the international political, human rights and environmental arenas created a new context and focus of concerns, perceptions and interests. The impact of those events and developments on current and future refugee problems and on the role of the Office of the United Nations High Commissioner for Refugees had yet to become apparent or to be fully grasped. In many other respects, however, developments in the global refugee situation continued to be characterized by the three considerations, namely: the attainment of durable solutions to some of the world's long-lasting refugee situations; the deterioration, nevertheless, of the overall global refugee situation in that new influxes were occurring amidst a generally less receptive international environment for refugees and asylum-seekers; and finally, the financial crisis faced by the Office, which worsened considerably, putting in ever more serious jeopardy the capacity of the Organization to meet even the most basic needs of refugees.

In connection with the attainment of durable solutions, the single most notable of those developments was in Namibia. The emergence there of an independent State, on 21 March 1990, was preceded by the successful repatriation, between June and September 1989, of up to 43,000 Namibians as part of the implementation of the Independence Plan for Namibia under Security Council resolution 435 (1978) of 29 September 1978.

International protection involved using law and principles to secure the rights, security and welfare of refugees. Beyond attaining immediate objectives, such as the prevention of *refoulement*, the ultimate aim of protection was to achieve solutions to the problems of refugees, either through voluntary return to their countries of origin in conditions of safety, or through integration in new national communities. During the reporting period, many States continued to respect their commitments in that field and the vast majority of the world's refugees were admitted into the territory of States, granted at least temporary asylum and protected from *refoulement*. Nevertheless, in a number of instances admission and asylum were denied on various grounds. These included the refusal by States to examine asylum requests based upon a strict application of the notion of "country of first asylum", even where the persons concerned were not permitted to re-enter or remain in the country from which they had last come or where it was far from clear that they would receive human treatment.

No country acceded to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol during the reporting period. The number of States parties to one or both of those instruments therefore remained at 106. Two States, Brazil and Italy, withdrew their geographical limitations to the 1951 Convention.

During the period under review, UNHCR continued to provide advice and training to government officials and others on the appropriate content of procedures for the determination of refugee status and how to implement it. In the context of the Comprehensive Plan of Action for Indo-Chinese Refugees, UNHCR assisted all receiving countries in South-East Asia in establishing procedures for the determination of refugee status and provided advice and guidance throughout the process both to the officials charged with their implementation and to asylum-seekers.

UNHCR also pursued its traditional promotion and dissemination activities with respect to refugee law and protection principles. The Centre for Documentation on Refugees continued to strengthen and systematize the information and documentation policies of the Office, particularly as they related to the protection of refugees. In

addition to the continued publication of its quarterly *Refugee Abstracts*, the Centre directed the development and subsequent publication by the International Refugee Documentation Network of an international thesaurus on refugee terminology. Finally, UNHCR continued to extend cooperation to Oxford University Press in its publication of the *International Journal of Refugee Law*, the first four issues of which appeared in 1989.

At the forty-first session of the Executive Committee of the Programme of the High Commissioner for Refugees, held at Geneva from 1 to 5 October 1990,⁹⁰ the Committee called upon States, UNHCR and other concerned parties to take all necessary measures to ensure that refugees were effectively protected and recalled in that regard the fundamental importance of the United Nations Convention relating to the Status of Refugees of 28 July 1951⁹¹ and the Protocol relating to the Status of Refugees of 31 January 1967;⁹² noted with appreciation the accomplishments of the Office in promoting and disseminating refugee law, particularly through the organization of protection training courses, and in maintaining a research capacity, and called upon the High Commissioner to consider how to pursue those activities within existing resources; stressed that all action taken on behalf of women who were refugees must be guided by the relevant international instruments relating to the status of refugees, as well as other applicable human rights instruments, in particular, for States parties thereto, the *United Nations Convention on the Elimination of All Forms of Discrimination against Women*;⁹³ approved the policy on refugee women as contained in document A/AC.96/754; and invited UNHCR to develop comprehensive guidelines on the protection of refugee women as a matter of urgency in order to give effect to its policy on refugee women.

By its resolution 45/140A of 14 December 1990,⁹⁴ adopted on the recommendation of the Third Committee,⁹⁵ the General Assembly strongly reaffirmed the fundamental nature of the function of the Office of the United Nations High Commissioner for Refugees to provide international protection and the need for States to cooperate fully with the Office in fulfilling that function, in particular by acceding to and fully and effectively implementing the relevant international and regional refugee instruments; recognized the urgent need to put all issues related to refugees, asylum-seekers and other migratory flows firmly on the international political agenda, especially in view of the fortieth anniversary of the Office of the High Commissioner and the 1951 Convention relating to the Status of Refugees, and in that connection welcomed initiatives to promote further awareness of and support for the Office, including accessions to that instrument; called upon States to give high priority to the rights of refugee children and to their survival, protection and development as reflected in the Convention on the Rights of the Child⁹⁶ and in the World Declaration on the Survival, Protection and Development of Children in the 1990s,⁹⁷ adopted by the World Summit for Children in New York on 30 September 1990; endorsed the High Commissioner's policy on refugee women, which provided for the integration of refugee women into all the programmes of the Office of the High Commissioner, as well as the conclusion on refugee women and international protection adopted by the Executive Committee of the Programme of the High Commissioner at its forty-first session;⁹⁸ and also endorsed the conclusion on the note on international protection adopted by the Executive Committee of the Programme of the High Commissioner at its forty-first session,⁹⁹ in which, in particular, the Executive Committee had recognized the importance of human rights and humanitarian principles and recognized that the current size and characteristics of the refugee and asylum problem necessitated appropriate reassessment of international responses to the problem to date, with a view to developing

comprehensive approaches to meet current realities, and at the same time noted the difference between refugees and persons seeking to migrate for economic and related reasons.

(e) International drug control

(1) *Status of international instruments*

In the course of 1990, 10 more States became parties to the 1971 Convention on Psychotropic Substances,¹⁰⁰ two more States became parties to the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961,¹⁰¹ and five more States became parties to the Single Convention on Narcotic Drugs, 1961, as amended by the Protocol of 25 March 1972 amending the Single Convention on Narcotic Drugs, 1961.¹⁰² On 11 November 1990, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988¹⁰³ entered into force, and as of the end of the year, 32 States had become parties to the Convention.

(2) *Seventeenth special session of the General Assembly*

By its resolution S-17/2 of 23 February 1990,¹⁰⁴ adopted on the recommendation of the Ad Hoc Committee of the Seventeenth Special Session,¹⁰⁵ the General Assembly, at that session, which was devoted to the question of international cooperation against illicit production, supply, demand, trafficking and distribution of narcotic drugs and psychotropic substances, adopted the Political Declaration and the Global Programme of Action on international cooperation against illicit production, supply, demand, trafficking and distribution of narcotic drugs and psychotropic substances, which was annexed to the resolution. Excerpts from the Political Declaration and the Global Programme of Action are reproduced below.

Political Declaration

We, the States Members of the United Nations,

...

Reaffirming our determination to combat the scourge of drug abuse and illicit trafficking in narcotic drugs and psychotropic substances in strict conformity with the principles of the Charter of the United Nations, the principles of international law, in particular respect for the sovereignty and territorial integrity of States, the principle of non-interference in the internal affairs of States and non-use of force or the threat of force in international relations, and the provisions of the international drug control conventions,

Reaffirming also the provisions set forth in the Single Convention on Narcotic Drugs of 1961, and in that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs of 1961, the Convention on Psychotropic Substances of 1971 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted in 1988,

...

Agree on the following:

...

5. We shall increase our efforts and resources in order to intensify international cooperation and concerted action, based upon the principle of shared responsibility, including the necessary cooperation and assistance to affected States, when requested, in the economic, health, social, judicial and law enforcement sectors in order to strengthen the capabilities of States to deal with the problem in all its aspects;

...

18. We shall further develop and utilize, to the maximum extent, existing bilateral and other international instruments or arrangements for enhancing international legal and law enforcement co-operation;

19. We reaffirm the principles set forth in the Declaration of the International Conference on Drug Abuse and Illicit Trafficking and undertake to apply, as appropriate, the recommendations of the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control;¹⁰⁶

20. We urge States to ratify or accede to the United Nations conventions in the field of drug abuse control and illicit trafficking and, to the extent they are able to do so, to apply provisionally the terms of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;

...

GLOBAL PROGRAMME OF ACTION

I. INTRODUCTION

...

2. An important aspect of the fight against drug abuse has been the elaboration of international legal instruments. The adoption of the Single Convention on Narcotic Drugs of 1961 and of that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs of 1961 and of the Convention on Psychotropic Substances of 1971 were first important steps in that direction.

...

4. In order to reinforce and supplement the measures provided in existing legal instruments and to counter the new magnitude and extent of illicit drug trafficking and its grave consequences, a United Nations plenipotentiary conference, held at Vienna from 25 November to 20 December 1988, adopted the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

...

C. Control of supply of narcotic drugs and psychotropic substances

1. Eradication and substitution of illicit production of narcotic drugs, and eradication of illicit processing of such drugs and of illicit production and diversion of psychotropic substances

38. States shall consider, at the national and international levels, means by which the internal sector of those economies that are affected by the illicit production and processing of narcotic drugs and psychotropic substances might be strengthened, in order to support and strengthen the implementation, by competent national authorities, of effective anti-drug programmes, including the following measures:

...

[39.] (b) Consideration by States of entering into multilateral, bilateral or regional agreements with countries affected by illicit drug production and processing, with a view to facilitating access by those countries to international markets and to assisting them in strengthening and adapting their internal capacity to produce exportable goods;

...

4. Monitoring and control mechanisms

45. States shall take all necessary measures, such as the conclusion of bilateral and regional agreements, to establish monitoring and control systems to prevent diversion from legitimate purposes of specific chemical substances, materials and equipment frequently used in the illicit manufacture of narcotic drugs and psychotropic substances, in particular through the application of articles 12 and 13 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted in 1988.

...

D. *Suppression of illicit trafficking in narcotic drugs and psychotropic substances*

1. *Traffic*

51. States shall proceed rapidly and make every effort to ratify or accede to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in 1988, in order to enable the entry into force of the Convention, preferably by the end of 1990.

52. The United Nations, in particular the Division of Narcotic Drugs, the International Narcotics Control Board and the United Nations Fund for Drug Abuse Control, shall provide expertise and assistance to States, at their request, to enable them to establish the legislative and administrative measures for the ratification and effective implementation of the United Nations Convention.

53. States shall, to the extent and where they are able to do so, apply provisionally the measures set forth in the United Nations Convention.

54. Consistent with the United Nations Convention, consideration shall be given to the conclusion of bilateral, regional and multilateral agreements and other arrangements aimed at suppressing illicit trafficking in narcotic drugs and psychotropic substances.

55. States that have not yet done so shall consider ratification of or accession to the Single Convention on Narcotic Drugs of 1961 and that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs of 1961 and the Convention on Psychotropic Substances of 1971.

...

59. States shall make increased use of the meetings of heads of National Drug Law Enforcement Agencies and other intergovernmental organizations, such as the Customs Cooperation Council and the International Criminal Police Organization (Interpol), regional cooperation arrangements and other relevant institutional frameworks, for the purpose of co-ordinating cooperation in law enforcement and expanding programmes of training for law enforcement personnel in investigative matters and methods, interdiction and narcotics intelligence.

...

E. *Measures to be taken against the effects of money derived from, used in or intended for use in illicit drug trafficking, illegal financial flows and illegal use of the banking system*

62. Priority shall be accorded to the implementation of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in 1988, and the conclusion of bilateral, regional and multilateral agreements on tracing, freezing and seizure and forfeiture or confiscation of property and proceeds derived from, used in or intended for use in illicit drug trafficking.

63. Mechanisms shall be developed to prevent the banking system and other financial institutions from being used for the processing and laundering of drug-related money. To this end, consideration should be given by States to entering into bilateral, regional and multilateral agreements and developing mechanisms to trace property and proceeds derived from, used in or intended for use in drug-related activities through the international banking system, facilitate access to banking records and provide for the exchange of information between law enforcement, regulatory or investigative agencies concerning the financial flow of property or proceeds related to illicit drug trafficking.

...

66. States shall consider enacting legislation to prevent the use of the banking system for the processing and laundering of drug-related money, *inter alia*, through declaring such activities criminal offences.

67. States shall consider enacting legislation to permit the seizure and forfeiture of property and proceeds derived from, used in or intended for use in illicit drug trafficking. To that end, consideration should be given by States to concluding bilateral and multilateral agreements to enhance the effectiveness of international co-operation, taking into particular account article 5, paragraph 5, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

68. States shall encourage international, regional and national financial associations to develop guidelines to assist their members in cooperating with government authorities in identifying, detecting, tracing, freezing and seizing proceeds and property related to illicit trafficking in narcotic drugs and psychotropic substances.

69. The elaboration of international agreements providing for stringent controls on money derived from, used in or intended for use in drug-related activities and penalizing the laundering of such money might be considered. Such instruments might also deal with the forfeiture or confiscation of funds, proceeds and property acquired through revenues deriving from drug-related activities.

- - -

F. Strengthening of judicial and legal systems, including law enforcement

74. States shall, as soon as possible, ratify or accede to the United Nations conventions in the field of drug abuse control and illicit trafficking.

75. States in a position to do so and the United Nations, strengthening their action in coordination with the regional institutes of the United Nations with mandates in this sphere, shall provide advice and legal and technical assistance to enable States, at their request, to adapt their national legislation to international conventions and decisions dealing with drug abuse and illicit trafficking.

76. States are invited to give consideration to the model treaties on mutual assistance in criminal matters and on extradition, which contain specific provisions related to illicit traffic in narcotic drugs and psychotropic substances and are to be dealt with by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

77. States shall encourage international and regional organizations to elaborate model agreements on cooperation among customs officials, law enforcement agencies and other interested organs in the field of combating drug abuse and illicit trafficking.

78. The scope of international cooperation in support of technical assistance programmes aimed at the strengthening of judicial, legal and law enforcement systems, in particular in the field of the administration of justice, shall be extended. Particular attention shall be given to the training of personnel at all levels.

79. Measures to protect the judiciary from any form of exposure and intimidation threatening its independence and integrity shall be studied and promoted.

80. The United Nations shall act as a clearing-house for information on training programmes in drug law enforcement, including training for national narcotics agents in investigative methods, interdiction and narcotics intelligence.

81. Consideration shall be given to establishing a capability within the United Nations system to coordinate the provision by States of training and equipment to other States, at their request, for their own anti-drug operations, within their territories, to inhibit the use, interdict the supply and eliminate the illicit trafficking of drugs.

82. Since the International Law Commission has been requested to consider the question of establishing an international criminal court or other international trial mechanism with jurisdiction over persons alleged to be engaged in illicit trafficking in narcotic drugs across national frontiers, the Administrative Committee on Coordination shall consider, in its annual adjustments to the United Nations system-wide action plan on drug abuse control requested by the General Assembly in its resolution 44/141 of 15 December 1989, the report of the International Law Commission on the question.

83. States shall consider the appropriateness of establishing arrangements, on the basis of bilateral, regional and multilateral agreements, which would allow them to benefit from one another's criminal justice system in dealing with similar drug-related offences.

84. Consideration shall be given to establishing a register of anti-drug expertise and services, under the supervision of the Division of Narcotic Drugs, which could be made available to States, at their request.

85. A review should be undertaken of international and regional law enforcement activities funded or sponsored by the United Nations, as well as those of other intergovernmental organizations and regional arrangements, to ensure a coherent approach to law enforcement activities within the overall context of the Global Programme of Action.

...

H. Resources and structure

...

94. Attention shall be given to the need for (a) coherence of actions within the United Nations drug-related units and coordination, complementarity and non-duplication of all drug-related activities across the United Nations system; (b) integration of drug-related information within the United Nations system; (c) integration of the reduction of illicit demand in United Nations programming; (d) integration of law enforcement field expertise in United Nations programmes; (e) compliance with all non-discretionary obligations mandated by the three drug control conventions; and (f) an estimate of resources necessary to carry out these mandates successfully.

...

(3) Consideration by the General Assembly

By its resolution 45/147 of 18 December 1990,¹⁰⁷ adopted on the recommendation of the Third Committee¹⁰⁸ the General Assembly, conscious that the adoption of the Political Declaration and the Global Programme of Action at the seventeenth special session of the General Assembly was an important step in the harmonization of the efforts of all to combat that scourge of mankind, reaffirmed that the fight against drug abuse and illicit trafficking should continue to be based on strict respect for the principles enshrined in the Charter of the United Nations and international law, particularly respect for the sovereignty and territorial integrity of States, non-interference in the internal affairs of States and non-use of force or the threat of force in international relations; and affirmed that the international fight against drug trafficking should not in any way justify violation of the principles enshrined in the Charter of the United Nations and international law, particularly the right of all peoples freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and that every State had the duty to respect that right in accordance with the provisions of the Charter.

By its resolution 45/148 of the same date,¹⁰⁹ adopted also on the recommendation of the Third Committee,¹¹⁰ the General Assembly reaffirmed the commitment expressed in the Global Programme of Action¹¹¹ adopted by the Assembly at its seventeenth special session on 23 February 1990 and the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control, as adopted by the International Conference on Drug Abuse and Illicit Trafficking;¹¹² and called upon States to take all possible steps to promote and implement individually and in cooperation with others the mandates and recommendations contained in the Global Programme of Action, with a view to translating the Programme into practical action to the widest possible extent at the national, regional and international levels. And by its resolution 45/149 of the same date,¹¹³ adopted on the recommendation of the Third Commit-

tee,¹¹⁴ the General Assembly requested the Commission on Narcotic Drugs to study the mandates and recommendations contained in the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control, the Global Programme of Action and other relevant documents, with a view to establishing a timetable for their implementation in the first five years of the United Nations Decade against Drug Abuse 1991-2000.

Furthermore, by its resolution 45/146 of the same date,¹¹⁵ adopted also by the Third Committee,¹¹⁶ the General Assembly urged States that had not yet done so to proceed as soon as possible to ratify or accede to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,¹⁰³ in order to make its provisions more universally effective; also urged States to establish the necessary legislative and administrative measures so that their internal juridical regulations might be compatible with the spirit and the scope of the Convention; and once again urged all States that had not yet done so to ratify or accede to the Single Convention on Narcotic Drugs of 1961,¹⁰¹ and that Convention as amended by the 1972 Protocol,¹⁰² and the Convention of Psychotropic Substances of 1971.¹⁰⁰

By its resolution 45/179 of 21 December 1990,¹¹⁷ adopted on the recommendation of the Third Committee,¹¹⁸ the General Assembly, recognizing that the new dimensions taken on by the drug menace necessitated a more comprehensive and integrated approach to international drug control and a more efficient structure to ensure coordination, complementarity and non-duplication of activities across the United Nations system in order to use available resources in the most efficient way to enable the United Nations to play a central and greatly enhanced role in that field, took note with appreciation of the report of the Secretary-General¹¹⁹ and the report of the Group of Experts, entitled "Drugs and the United Nations: meeting the challenge";¹²⁰ and requested the Secretary-General to create a single drug control programme, to be called the United Nations International Drug Control Programme, based at Vienna, and to integrate fully therein the structures and the functions of the Division of Narcotic Drugs of the Secretariat, the secretariat of the International Narcotics Control Board and the United Nations Fund for Drug Abuse Control with the objective of enhancing the effectiveness and efficiency of the United Nations structure for drug abuse control in keeping with the functions and mandates of the United Nations in that field.

(f) Human rights questions

(1) *Status and implementation of international instruments*

(i) *International Covenants on Human Rights*¹²¹

In 1990, four more States became parties to the International Covenant on Economic, Social and Cultural Rights,¹²² four more States became parties to the International Covenant on Civil and Political Rights¹²³ and three more States became parties to the Optional Protocol to the International Covenant on Civil and Political Rights.¹²⁴

By its resolution 45/135 of 14 December 1990,¹²⁵ adopted on the recommendation of the Third Committee,¹²⁶ the General Assembly took note with appreciation of the report of the Human Rights Committee on its thirty-seventh, thirty-eighth and thirty-ninth sessions,¹²⁷ including the suggestions and recommendations of a general nature approved by the Committee; again urged all States which had not yet done so to become parties to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and to consider

acceding to the Optional Protocols 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; stressed the importance of avoiding the erosion of human rights by derogation, and underlined the necessity of strict observance of the agreed conditions and procedures for derogation under article 4 of the International Covenant on Civil and Political Rights, bearing in mind the need for States parties to provide the fullest possible information during states of emergency, so that the justification for and appropriateness of measures taken in those circumstances could be assessed; appealed to States parties to the Covenants that had exercised their sovereign right to make reservations in accordance with relevant rules of international law to consider whether any such reservations should be reviewed; and encouraged all Governments to publish the texts of the Covenants in as many languages as possible and to distribute them and make them known as widely as possible in their territories.

(ii) *International Convention on the Elimination of All Forms of Racial Discrimination*¹²⁸

In 1990, two more States became parties to the International Convention on the Elimination of All Forms of Racial Discrimination.

In its resolution 45/89 of 14 December 1990,¹²⁹ adopted on the recommendation of the Third Committee,¹³⁰ the General Assembly 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 the objectives of the Second Decade to Combat Racism and Racial Discrimination;¹³¹ requested those States which 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.

(iii) *International Convention on the Suppression and Punishment of the Crime of Apartheid*¹³²

In 1990, one more State became party to the International Convention on the Suppression and Punishment of the Crime of Apartheid.

By its resolution 45/90 of 14 December 1990,¹³³ adopted on the recommendation of the Third Committee,¹³⁴ the General Assembly underlined the importance of the universal ratification of the Convention, which would be an effective contribution to the fulfilment of the ideals of the Universal Declaration of Human Rights and other human rights instruments; 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 without whose cooperation such operations could not be halted; and 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 or which legal proceedings had been undertaken.

(iv) *Convention on the Elimination of All Forms of Discrimination against Women*¹³⁵

In 1990, four more States became parties to the Convention on the Elimination of All Forms of Discrimination against Women.

By its resolution 45/124 of 14 December 1990,¹³⁶ adopted on the recommendation of the Third Committee,¹³⁷ the General Assembly urged all States that had not yet ratified or acceded to the Convention to do so as soon as possible; and welcomed, in accordance with general recommendation No. 11 of the Committee on the Elimination of Discrimination against Women,¹³⁸ the initiatives taken to provide regional training courses on the preparation and drafting of reports of States parties for government officials and training and information seminars for States considering acceding to the Convention, and urged the relevant organs and organizations of the United Nations to support such initiatives.

(v) *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*¹³⁹

By its resolution 45/142 of 14 December 1990,¹⁴⁰ adopted on the recommendation of the Third Committee,¹⁴¹ the General Assembly reiterated its request to all States to become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as a matter of priority and once again invited all States, upon ratification of or accession to the Convention, or subsequently, to consider the possibility of making the declarations provided for in articles 21 and 22 of the Convention.

(vi) *Convention on the Rights of the Child*¹⁴²

By its resolution 45/104 of 14 December 1990,¹⁴³ adopted on the recommendation of the Third Committee,¹⁴⁴ the General Assembly welcomed with deep satisfaction the entry into force of the Convention on the Rights of the Child on 2 September 1990 as a major step in international efforts to promote universal respect for and observance of human rights and fundamental freedoms; called upon all States that had not done so to sign, ratify or accede to the Convention as a matter of priority; and **recognized the importance** of the establishment of the Committee on the Rights of the Child as an essential mechanism for overseeing the effective implementation of the provisions of the Convention.

(vii) *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*

By its resolution 45/158 of 18 December 1990,¹⁴⁵ adopted on the recommendation of the Third Committee,¹⁴⁶ the General Assembly adopted and opened for signature, ratification and accession the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, contained in the annex to the resolution,¹⁴⁷ called upon all Member States to consider signing and ratifying or acceding to the Convention as a matter of priority and expressed the hope that it would enter into force at an early date.

(viii) *Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights*

By its resolution 45/85 of 14 December 1990,¹⁴⁸ adopted on the recommendation of the Third Committee,¹⁴⁹ the General Assembly, reaffirming that the effective

implementation of United Nations instruments on human rights was of major importance to the efforts made by the Organization, pursuant to the Charter of the United Nations and to the Universal Declaration of Human Rights,¹⁵⁰ to promote universal respect for and observance of human rights and fundamental freedoms, endorsed the conclusions and recommendations of the meetings of persons chairing the human rights treaty bodies, held at Geneva from 1 to 5 October 1990,¹⁵¹ aimed at streamlining, rationalizing and otherwise improving reporting procedures, and supported the continuing efforts in that connection by the treaty bodies and the Secretary-General within their respective spheres of competence; once again expressed its satisfaction with the study by the independent expert¹⁵² on possible long-term approaches to enhancing the effective operation of existing and prospective bodies established under United Nations instruments on human rights, which contained several recommendations on reporting and monitoring procedures, servicing and financing of supervisory bodies and long-term approaches to human rights standard-setting and implementation mechanisms; endorsed the recommendations of the Task Force on Computerization¹⁵³ appointed by the Secretary-General to prepare a study on computerizing the work of the treaty-monitoring bodies, with a view to increasing efficiency and facilitating compliance by States parties with their reporting obligations and the examination of reports by the treaty bodies; requested the Secretary-General to give high priority to establishing a computerized database to increase the efficiency and effectiveness of the functioning of the treaty bodies; and recalled the report of the Secretary-General¹⁵⁴ to the Committee on Economic, Social and Cultural Rights showing the extent of overlapping issues dealt with in international instruments on human rights, which would assist efforts to reduce, as appropriate, duplication in the supervisory bodies of issues raised with respect to any given State party.

(g) Universal realization of the right of people to self-determination

By its resolution 45/131 of 14 December 1990,¹⁵⁵ adopted on the recommendation of the Third Committee,¹⁵⁶ the General Assembly 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. Furthermore, by its resolution 40/130 of the same date,¹⁵⁷ adopted also on the recommendation of the Third Committee,¹⁵⁸ the General 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 and reaffirmed the legitimacy of the struggle of peoples for independence, territorial integrity, national unity and liberation from colonial domination, apartheid and foreign occupation by all available means, including armed struggle.

(h) Human rights and scientific and technological developments

By its resolution 45/93 of 14 December 1990,¹⁵⁹ adopted on the recommendation of the Third Committee,¹⁶⁰ the General Assembly recalled the historic responsibility of the Governments of all countries of the world to preserve civilization and to ensure that everyone enjoyed his or her inherent right to life, and called upon them to do their utmost to assist in implementing the right to life through the adoption of appropriate

measures at both the national and the international levels; it also called upon all States, appropriate United Nations bodies, the specialized agencies and intergovernmental and non-governmental organizations concerned to take the necessary measures to ensure that the results of scientific and technological progress and the material and intellectual potential of mankind were used for the benefit of mankind and for promoting and encouraging universal respect for human rights and fundamental freedoms. By its resolution 45/92 of the same date,¹⁶¹ adopted also on the recommendation of the Third Committee,¹⁶² the Assembly welcomed the significant progress made by the Working Group of the Commission on Human Rights in the elaboration of a body of principles for the protection of persons with mental illness and for the improvement of mental health care, and urged the Group to complete its work expeditiously for submission to the Commission on Human Rights.

- (i) 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 45/98 of 14 December 1990,¹⁶³ adopted on the recommendation of the Third Committee,¹⁶⁴ the General Assembly recognized that there existed in Member States many forms of legal property ownership, including private, communal, social and State forms, each of which should contribute to ensuring effective development and utilization of human resources by establishing 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 proclaimed therein; considered that further measures might be appropriate at the national level, consistent with national policies, to ensure respect for the right of everyone to own property alone as well as in association with others and the right not to be arbitrarily deprived of one's property, as set forth in article 17 of the Declaration of Human Rights, so as to protect and preserve those rights in relation to the following types of property: (a) personal property, including the residence of one's self and family; (b) economically productive property, including property associated with agriculture, commerce and industry; and urged States, therefore, in accordance with their constitutional systems and the Universal Declaration of Human Rights, to provide, where they had not done so, adequate constitutional and legal provisions to protect the right of everyone to own property alone as well as in association with others and the right not to be arbitrarily deprived of one's property.

- (j) Need to ensure a healthy environment for the well-being of individuals

By its resolution 45/94 of 14 December 1990,¹⁶⁵ adopted on the recommendation of the Third Committee,¹⁶⁶ the General Assembly, recalling that, in accordance with the provisions of the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, everyone had the right to an adequate standard of living for his or her own health and well-being and that of his or

her family and to the continuous improvement of living conditions; considering that a better and healthier environment could contribute to the full enjoyment of human rights by all; reaffirming that, in accordance with the Declaration of the United Nations Conference on the Human Environment,¹⁶⁷ men and women had the fundamental right to freedom, equality and adequate conditions of life in an environment of a quality that permitted a life of dignity and well-being, and that they bore a solemn responsibility to protect and improve the environment for present and future generations; and welcoming Commission on Human Rights resolution 1990/41 of 6 March 1990¹⁶⁸ and Subcommittee on Prevention of Discrimination and Protection of Minorities resolution 1990/7 of 30 August 1990,¹⁶⁹ in which they had decided to study the problems of the environment and its relation to human rights, recognized that all individuals were entitled to live in an environment adequate for their health and well-being and encouraged the Commission, with the assistance of its Subcommittee, to continue studying the problems of the environment and its relation to human rights, with a view to submitting to the Preparatory Committee of the United Nations Conference on Environment and Development, through the Economic and Social Council, a report on the progress made on the matter.

(k) Use of mercenaries as a means to violate human rights and to impede the exercise of the right of peoples to self-determination

By its resolution 45/132 of 14 December 1990,¹⁷⁰ adopted on the recommendation of the Third Committee,¹⁷¹ the General Assembly, welcoming the adoption of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries,¹⁷² affirmed that the use of mercenaries and their recruitment, financing and training were offences of grave concern to all States and violated the purposes and principles enshrined in the Charter of the United Nations, and urged all States to take early action to sign, accede to or ratify the Convention, in order to expedite its entry into force.

(l) Summary or arbitrary executions

By its resolution 45/162 of 18 December 1990,¹⁷³ adopted on the recommendation of the Third Committee,¹⁷⁴ the General Assembly, having regard to the provisions of the International Covenant on Civil and Political Rights, in which it was stated that every human being had the inherent right to life, that that right should be protected by law and that no one should be arbitrarily deprived of his life; recalling Economic and Social Council resolution 1989/65 of 24 May 1989, containing the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions and resolution 1989/64 of the same date, entitled "Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty" and the recommendations contained therein, once again strongly condemned the large number of summary or arbitrary executions, including extralegal executions, that continued to take place in various parts of the world; welcomed the recommendations made by the Special Rapporteur to consider the questions related to summary or arbitrary executions in his reports¹⁷⁵ to the Commission on Human Rights at its forty-fourth, forty-fifth and forty-sixth sessions with a view to eliminating summary or arbitrary executions; 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 have been respected; and requested the Commission on Human Rights at its forty-seventh session, on the basis of the report of the Special Rapporteur to be prepared in conformity with Economic and Social Council resolutions 1982/35, 1983/36, 1984/35, 1985/40, 1986/36, 1987/60 and 1988/38, to make recommendations concerning appropriate action to combat and eventually eliminate the abhorrent practice of summary or arbitrary executions.

(m) Elimination of all forms of religious intolerance

By its resolution 45/136 of 14 December 1990,¹⁷⁶ 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, the International Covenant on Civil and Political Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief,¹⁷⁸ to provide, where they had not already done so, adequate constitutional and legal guarantees of freedom of thought, conscience, religion and belief, including the provision of effective remedies where there was intolerance or discrimination based on religion or belief; called upon all States to recognize, as provided in the above-mentioned Declaration, the right of all persons to worship or assemble in connection with a religion or belief, and to establish and maintain places for those purposes; and noted that the Commission on Human Rights had welcomed the working paper prepared by the member of the Subcommission on Prevention of Discrimination and Protection of Minorities,¹⁷⁹ which contained a compilation of provisions relevant to the elimination of intolerance and discrimination based on religion or belief, as well as the issues and factors to be considered before any drafting of a further binding international instrument, and emphasized, in that connection, the relevance of General Assembly resolution 41/120 of 4 December 1986 entitled "Setting international standards in the field of human rights".

(n) Guidelines for the regulation of computerized personal data files

By its resolution 45/95 of 14 December 1990,¹⁸⁰ adopted on the recommendation of the Third Committee,¹⁸¹ the General Assembly, bearing in mind Commission on Human Rights resolution 1990/42 of 6 March 1990 and Economic and Social Council resolution 1990/38 of 25 May 1990, entitled "Guidelines on the use of computerized personal files", adopted the guidelines for the regulation of computerized personal data files in their revised version;¹⁸² and requested Governments to take into account those guidelines in their legislation and administrative regulations.

(o) New international humanitarian order

By its resolution 45/101 of 14 December 1990,¹⁸³ adopted on the recommendation of the Third Committee,¹⁸⁴ the General Assembly, taking note of the report of the Secretary-General¹⁸⁵ and the comments made by various Governments regarding the

humanitarian order and the work done in that regard by the Independent Commission on International Humanitarian Issues and convinced of the need for active follow-up to the recommendations and suggestions made by the Independent Commission,¹⁸⁶ and noting the role being played in that regard by the Independent Bureau for Humanitarian Issues set up for the purpose, invited the Independent Bureau to continue and further strengthen its essential role in following up the work of the Independent Commission.

(p) 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 45/96 of 14 December 1990,¹⁸⁷ adopted on the recommendation of the Third Committee,¹⁸⁸ the General Assembly 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 every human being, that 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 promoting and protecting 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 General Assembly resolution 32/130, paying due attention also to other situations of violations of human rights; reaffirmed also that the right to development was an inalienable human right; reaffirmed further that international peace and security were essential elements for achieving full realization of the right to development; recognized that all human rights and fundamental freedoms were indivisible and interdependent; reaffirmed once again that, in order to facilitate the full enjoyment of all human rights without diminishing 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 the right of workers to participate in management, as well as the adoption of measures at the international level, including the establishment of the new international economic order; and decided that the approach to future work within the United Nations system on human rights matters should also take into account the content of the Declaration on the Right to Development¹⁸⁹ and the need for the implementation thereof. And by its resolution 45/97 of the same date,¹⁹⁰ adopted also on the recommendation of the Third Committee,¹⁹¹ the General Assembly took note with interest of the report on the Global Consultation on the Realization of the Right to Development as a Human Right,¹⁹² which had been organized by the Secretary-General in pursuance of General Assembly resolution 44/62 of 8 December 1989; and reiterated the need for a continuing evaluation mechanism so as to ensure the promotion, encouragement and reinforcement of the principles contained in the Declaration on the Right to Development.

(q) Development of public information activities
in the field of human rights

By its resolution 45/99 of 14 December 1990,¹⁹³ adopted on the recommendation of the Third Committee,¹⁹⁴ the General Assembly encouraged all Member States to

make special efforts to provide, 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 texts of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international conventions, as well as to information and education on the practical ways in which the rights and freedoms enjoyed under those instruments could be exercised; urged all Member States to include in their educational curricula materials relevant to a comprehensive understanding of human rights issues, and encouraged all those responsible for training in law and its enforcement, the armed forces, medicine, diplomacy and other relevant fields to include appropriate human rights components in their programmes; and stressed the need for close cooperation between the Centre for Human Rights and the Department of Public Information, *inter alia*, in the implementation of the aims established for the World Public Information Campaign on Human Rights and the need for the United Nations to harmonize its activities in the field of human rights with those of other organizations, including the International Committee of the Red Cross, with regard to the dissemination of information on international humanitarian law, and UNESCO, with regard to education for human rights.

(r) World Conference on Human Rights

By its resolution 45/155 of 18 December 1990,¹⁹⁵ adopted on the recommendation of the Third Committee,¹⁹⁶ the General Assembly decided to convene at a high level a World Conference on Human Rights in 1993 with, *inter alia*, the following objectives:

(a) to review and assess the progress that had been made in the field of human rights since the adoption of the Universal Declaration of Human Rights and to identify obstacles to further progress in that area, and ways in which they could be overcome;

(b) to examine the relation between development and the enjoyment by everyone of economic, social and cultural rights as well as civil and political rights, recognizing the importance of creating the conditions whereby everyone might enjoy those rights as set out in the International Covenants on Human Rights; and

(c) to examine ways and means to improve the implementation of existing human rights standards and instruments.

(s) Crime prevention and criminal justice

(1) *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders*

By its resolution 45/121 of 14 December 1990,¹⁹⁷ adopted on the recommendation of the Third Committee,¹⁹⁸ the General Assembly expressed its satisfaction with the successful results achieved by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Havana from 27 August to 7 September 1990; took note of the report of the Eighth Congress,¹⁹⁹ as well as the report of the Secretary-General on the implementation of the recommendations of the Seventh Congress²⁰⁰ and his reports on the implementation of the conclusions of the Eighth Congress;²⁰¹ and welcomed the instruments and resolutions adopted by the Eighth Congress²⁰² and invited Governments to be guided by them in the formulation of appropriate legislation and policy directives and to make efforts to implement the principles contained in them and in the relevant instruments and resolutions approved

by previous congresses and other relevant resolutions, in accordance with the economic, social, legal, cultural and political circumstances of each country.

(2) *Convention on the Prevention and Punishment of the Crime of Genocide*²⁰³

By its resolution 45/152 of 18 December 1990,²⁰⁴ adopted on the recommendation of the Third Committee,²⁰⁵ the General Assembly, reaffirming once again its conviction that genocide was a crime that violated the norms of international law and ran counter to the spirit and aims of the United Nations, noted with satisfaction that *more than one hundred States had ratified the Convention on the Prevention and Punishment of the Crime of Genocide or had acceded thereto and urged those States which had not yet become parties to the Convention to ratify it or accede thereto without further delay.*

(3) *International cooperation for crime prevention and criminal justice in the context of development*

By its resolution 45/107 of 14 December 1990,²⁰⁶ adopted on the recommendation of the Third Committee,²⁰⁷ the General Assembly, convinced that crime prevention and criminal justice in the context of development should be oriented towards the observance of the principles contained in the Caracas Declaration,²⁰⁸ the Milan Plan of Action,²⁰⁹ the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order²¹⁰ and other relevant resolutions and recommendations of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, adopted the recommendations on international cooperation for crime prevention and criminal justice in the context of development, as contained in the annex to the resolution.

ANNEX

Recommendations on international cooperation for crime prevention and criminal justice in the context of development

A. CRIME PREVENTION AND CRIMINAL JUSTICE IN THE CONTEXT OF DEVELOPMENT

1. Governments should reaffirm their commitment to respect the existing international treaties and their adherence to principles expressed in the Charter of the United Nations and in other relevant international instruments. Crime can also be prevented by ensuring that those principles are not sacrificed.

2. Member States should intensify the struggle against international crime by respecting and promoting the rule of law and legality in international relations and, for that purpose, they should complete and further develop international criminal law, fully implement the obligations following from international treaties and instruments in this field (*pacta sunt servanda*), and examine their national legislation in order to ensure that it meets the needs of international criminal law.

3. Governments should accord priority attention to the promulgation and implementation of appropriate laws and regulations to control and combat transnational crime and illegal international transactions, especially by the provision of proper collaborative schemes and trained personnel. Also, national laws should be reviewed in order to ensure a more effective and adequate response to the new forms of criminal activity, not only through the application of criminal penalties, but also through civil or administrative measures.

4. The national, regional and international aspects of growing pollution and the exploitation and destruction of the environment should be recognized and controlled as a matter of urgency, in view of the increasing and alarming devastation, deriving from various sources.

Besides measures of administrative law and liability under civil law, the role of criminal law as an instrument that can help to achieve such control should be kept under review. The desirability of elaborating guiding principles for the prevention of crimes against the environment should be considered.

5. In view of the fact that advanced technology and specialized technical knowledge are employed in criminal activities pursued in international trade and commerce, including computer fraud, by the misuse of banking facilities and the manipulation of tax laws and customs regulations, law enforcement and criminal justice officials should be properly trained and provided with adequate legal and technical means to be able to detect and investigate such offences. The coordination and cooperation of other relevant agencies at the national level should be ensured and their capacities further improved. The development and strengthening of direct arrangements of international cooperation between the various agencies of national criminal justice systems should also be pursued.

6. Since even legitimate enterprises, organizations and associations may sometimes be involved in transnational criminal activities affecting national economies, Governments should adopt measures for the control of such activities. They should also collect information from various sources so as to have a solid base for the detection and punishment of enterprises, organizations and associations, their officials, or both, if they are involved in such criminal activities, with a view also to preventing similar conduct in the future.

7. Note should be taken of the fact that many countries lack adequate laws to deal with the emerging manifestations of transnational crime and that the adoption and implementation of appropriate instruments and measures to prevent this type of criminality are urgently needed. In this regard, the exchange of information on existing laws and regulations should be encouraged in order to facilitate the dissemination and adoption of appropriate measures.

8. Because the corrupt activities of public officials can destroy the potential effectiveness of all types of governmental programmes, hinder development, and victimize individuals and groups, it is of crucial importance that all nations should (a) review the adequacy of their criminal laws, including procedural legislation, in order to respond to all forms of corruption and related actions designed to assist or to facilitate corrupt activities, and should have recourse to sanctions that will ensure adequate deterrence; (b) devise administrative and regulatory mechanisms for the prevention of corrupt practices or the abuse of power; (c) adopt procedures for the detection, investigation and conviction of corrupt officials; (d) create legal provisions for the forfeiture of funds and property from corrupt practices; and (e) take appropriate measures against enterprises involved in corruption. The Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs of the Secretariat should coordinate the elaboration of materials to assist countries in these efforts, including the development of a manual to combat corruption, and should provide specialized training to judges and prosecutors that would qualify them to deal with the technical aspects of corruption, as well as with the experiences derived from specialized courts handling such matters.

9. Noting the alarming threat posed by illicit trafficking in narcotic drugs and psychotropic substances, which is among the worst crimes that humanity is facing, and the action taken by United Nations drug control units and bodies in this field, and concerned that, despite all the efforts made at the national, regional and international levels, this phenomenon persists unabated, it is important that efforts to combat this type of criminality be given a central place in all crime prevention and criminal justice plans and programmes. The work of the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs in this area should be strengthened. Special assistance should be extended to developing countries for the implementation of drug abuse control programmes and the elaboration of collaborative prevention and control strategies.

10. The process of developing comprehensive model codes, especially at the regional and subregional levels, to combat crimes of transnational and international dimensions, should be encouraged. Also, efforts should be made to harmonize national criminal laws, so as to make them fully responsive to the realities and ramifications of such crimes. Practical arrangements, such as extradition, mutual assistance in criminal justice and the sharing and exchange of exper-

tise and information, should be pursued. Adequate attention should be given to effective enforcement mechanisms in order to minimize the consequences of transborder crimes, including their effect on countries not directly involved.

11. Appropriate educational policies should be developed for making the populations of Member States more sensitive to the problem through formal educational systems and general public information programmes, with a view to promoting awareness of the ways and means by which criminal victimization can be avoided, as well as acquainting the public at large with the objectives and processes of the criminal justice system.

12. In recognition of the need for specific preventive measures related to such types of criminality as burglary, violent theft and street crime, an inventory of preventive measures should be prepared by the United Nations on the basis of an in-depth assessment and evaluation of their effectiveness in various cultural, social, economic and political contexts.

13. With respect to the victims of crime and abuse of power, a guide containing an inventory of comprehensive measures for education on the prevention of victimization, and on the protection of, and assistance and compensation to, victims should be prepared. This guide should be applied in accordance with the legal, sociocultural and economic circumstances of each nation, taking into account the important role of non-governmental organizations in this sphere.

14. In view of its crucial function in crime prevention, the criminal justice system should be developed on the basis of the progressive rationalization and humanization of criminal laws and procedures, sentencing policies and dispositional alternatives, within the overall framework of social justice and societal aspirations.

15. A systematic approach to crime prevention planning should be pursued to provide for the incorporation of crime prevention policies into national development planning, starting from an overall reassessment of substantive criminal and procedural laws whenever appropriate. This approach would include the introduction of the processes of decriminalization, depenalization and diversion, as well as reforms of procedures that would ensure the support of members of the public and review of existing policies with a view to assessing their impact. It would also include appropriate links to be established between the criminal justice system and other development sectors, including education, employment, health, social policy and other related fields.

16. The trial process should be consonant with the cultural realities and social values of society, in order to make it understood and to permit it to operate effectively within the community it serves. Observance of human rights, equality, fairness and consistency should be ensured at all stages of the process.

B. INTERNATIONAL SCIENTIFIC AND TECHNICAL COOPERATION

17. In order to increase the effectiveness of international cooperation in crime prevention and criminal justice, concerted efforts should be made towards (a) the ratification and implementation of existing international instruments; (b) the development of bilateral and multilateral instruments; and (c) the preparation and elaboration of model instruments and standards for use at the national, bilateral, multilateral, subregional, regional and interregional levels.

18. The formulation of international instruments, standards and norms should include the following specific areas of concern: (a) judicial assistance treaties, in particular between common law and civil law countries, dealing with the means for obtaining evidence conforming to the requirements of the requesting State; (b) development of standardized requests for extradition and mutual assistance; (c) development of the means of providing assistance to victims of crime and abuse of power, with emphasis on the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,²¹¹ and of providing adequate protection for witnesses; (d) further consideration of issues of transnational jurisdiction in order to assist in the process of responding to requests for extradition and mutual assistance and in the implementation of international instruments; and (e) elaboration of standards for international assistance in respect of bank secrecy, facilitating the seizure and confiscation of proceeds in bank accounts derived from criminal acts. In particular, banks and other financial institutions should be urged

to standardize their reporting requirements and documents so that these can be used more rapidly and effectively as evidence. More effective international standards to inhibit the laundering of money and investment connected with criminal activities, such as narcotics trafficking and terrorism, should also be developed.

19. Member States, intergovernmental and non-governmental organizations and international, national and private funding agencies should assist the United Nations in the establishment and operation of a global crime prevention and criminal justice information network. Member States are urged to contribute to this endeavour by financing equipment and expertise. Consideration should also be given to determining the categories of criminal justice data that can be provided and exchanged on a regular basis.

20. In accordance with the numerous decisions and resolutions of relevant organs of the United Nations, including the quinquennial United Nations congresses on the prevention of crime and the treatment of offenders, measures should be taken to strengthen programmes of international technical and scientific cooperation in the field of crime prevention and criminal justice on a bilateral and multilateral basis, as substantive components of broader development programmes, taking into account the special needs of developing countries and, in particular, the worsening socio-economic situation in many of them, which contributes to the increase of structural inequality and criminality.

21. In order to formulate and develop proper regional and interregional strategies of international, technical and scientific cooperation in combating crime and improving the effectiveness of preventive and criminal justice activities, the programmes of technical and scientific cooperation should be directed especially towards (a) reinforcement of the technical capacities of the criminal justice agencies; (b) an upgrading of the human and technical resources in all sectors of the criminal justice system in order to stimulate technical assistance, model and demonstration projects, research activities and training programmes, in close cooperation with the United Nations institutes for the prevention of crime and the treatment of offenders and competent non-government organizations; (c) the further development and improvement, at the national, regional, interregional and international levels, of information bases for the collection, analysis and dissemination of data on crime trends, innovative ways and methods of crime prevention and control, and the operation of criminal justice agencies, in order to provide an appropriate basis for policy-formulation and programme implementation; (d) the promotion, through educational programmes and training activities, of the implementation of United Nations norms, guidelines and standards in crime prevention and criminal justice; and (e) the elaboration and implementation of joint strategies and collaborative arrangements to deal with crime problems of mutual concern.

22. The Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs, as the focal point of United Nations activities in this field, the United Nations institutes for the prevention of crime and the treatment of offenders, the co-operating entities like the Arab Security Studies and Training Centre, the interregional advisory services in crime prevention and criminal justice, and other relevant United Nations bodies, as well as intergovernmental and non-governmental organizations enjoying consultative status with the Economic and Social Council, should be strengthened so as to increase the scope of their operations, improve their co-ordination and diversify forms and methods of technical and scientific cooperation.

23. The role of the Committee on Crime Prevention and Control as the principal body dealing with crime prevention and criminal justice matters, which is entrusted, *inter alia*, with the preparations for the United Nations congresses on the prevention of crime and the treatment of offenders, should be further enhanced so as to enable it to fulfil its important functions.

24. The capacity of the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs, as the only professional and specialized entity within the United Nations system with overall responsibility for its crime prevention and criminal justice programme, should be strengthened in terms of both human and financial resources. Prompt implementation of the General Assembly and Economic and Social Council resolutions related thereto is urgently needed. In particular, priority attention should be given to the imple-

mentation of paragraphs 4 and 5 of General Assembly resolution 42/59 of 30 November 1987, in which the Assembly approved the recommendations contained in Economic and Social Council resolutions 1986/11 and 1987/53, concerning the review of the functioning and programme of work of the United Nations in the field of crime prevention and criminal justice,²¹² and requested the Secretary-General, *inter alia*, to take measures to ensure that the programme of work is supported by adequate resources; and paragraph 3 (a) of Economic and Social Council resolution 1987/53, in which the Council requested the Secretary-General to develop the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs as a specialized body and facilitating agent in the field of crime prevention and criminal justice. Attention should also be given to other relevant resolutions of the General Assembly and the Economic and Social Council, as well as to the recommendations of the regional preparatory meetings for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and of the Committee on Crime Prevention and Control.

25. The United Nations institutes for the prevention of crime and the treatment of offenders should further develop their research, training and technical assistance capacities, and widen their collaborative networks through more extensive reliance on non-governmental organizations and national research and educational institutions, in order to meet the growing requests from developing countries for technical and scientific assistance. The Governments concerned, relevant regional bodies and organizations and United Nations entities should actively assist the United Nations institutes for the prevention of crime and the treatment of offenders, and, in particular, should assist the African Institute for the Prevention of Crime and the Treatment of Offenders, in consolidating its status and further promoting its activities.

26. Governments should be invited to fund regional advisory services in their regions, directly or through the United Nations Development Programme, so as to develop further and complement existing structures and possibilities in this field. The regional commissions should be encouraged to do likewise and should be supported in their efforts to that end.

27. Special attention should be paid to strengthening the collaborative ties in the field of crime prevention and criminal justice between the Centre for Social Development and Humanitarian Affairs and the Department of Technical Cooperation for Development of the Secretariat, the United Nations Development Programme, the World Bank and other relevant entities, with a view to ensuring adequate resources for technical cooperation activities in crime prevention and criminal justice. Interested Governments should give priority to the inclusion of crime prevention and criminal justice projects in the national and regional programmes proposed for the support of the United Nations Development Programme.

28. In order to fully implement the mandates emerging from the crime prevention and criminal justice programme and to provide additional technical and scientific expertise and resources for matters of international cooperation in this field, broader involvement of, and assistance by, non-governmental organizations are required.

29. Governments and other funding agencies should contribute to the United Nations Trust Fund for Social Defence in order to enable the United Nations to implement, in an adequate and effective manner, programmes of technical and scientific cooperation in this field.

(4) *Review of the functioning and programme of work of the United Nations in crime prevention and criminal justice*

By its resolution 45/108 of 14 December 1990,²¹³ adopted on the recommendation of the Third Committee,²¹⁴ the General Assembly, taking note with appreciation of the report of the Committee on Crime Prevention and Control entitled "The need for the creation of an effective international crime and justice programme"²¹⁵ and noting the endorsement of the report by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, as well as the deliberations of the Congress thereon,²¹⁶ decided to establish an intergovernmental working group, which, on the basis of the above-mentioned report of the Committee on Crime Prevention and control, would produce a report elaborating proposals for an effective

crime prevention and criminal justice programme and suggesting how that programme could most appropriately be implemented, and, accordingly, requested the President of the General Assembly to appoint no more than thirty Member States on the basis of the principle of equitable geographical distribution to constitute the membership of the working group, and invited Member States to convene an early ministerial meeting: (a) to consider the report of the intergovernmental working group in order to decide what the future crime prevention and criminal justice programme should be; and (b) to consider, in that context, the possible need for a convention or other international instrument to develop the content, structure and dynamics of that programme, including mechanisms for setting priorities, securing the implementation of the programme and monitoring the results achieved.

(5) *United Nations Standard Minimum Rules for Non-custodial Measures*
(*The Tokyo Rules*)

By its resolution 45/110 of 14 December 1990,²¹⁷ adopted on the recommendation of the Third Committee,²¹⁸ the General Assembly, recognizing the need to develop local, national, regional and international approaches and strategies in the field of non-institutional treatment of offenders and the need to formulate standard minimum rules, as emphasized in the section of the report of the Committee on Crime Prevention and Control on its fourth session, concerning the methods and measures likely to be most effective in preventing crime and improving the treatment of offenders,²¹⁹ and convinced that alternatives to imprisonment could be an effective means of treating offenders within the community to the best advantage of both the offenders and society, adopted the United Nations Standard Minimum Rules for Non-custodial Measures, contained in the annex to the resolution, and approved the recommendation of the Committee on Crime Prevention and Control that the Rules should be known as "the Tokyo Rules"; recommended the Tokyo Rules for implementation at the national, regional and interregional levels, taking into account the political, economic, social and cultural circumstances and traditions of countries; and called upon Member States to apply the Tokyo Rules in their policies and practice.

ANNEX

United Nations Standard Minimum Rules for Non-custodial Measures
(**The Tokyo Rules**)

I. GENERAL PRINCIPLES

1. *Fundamental aims*

1.1 The present Standard Minimum Rules provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment.

1.2 The Rules are intended to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society.

1.3 The Rules shall be implemented taking into account the political, economic, social and cultural conditions of each country and the aims and objectives of its criminal justice system.

1.4 When implementing the Rules, Member States shall endeavour to ensure a proper balance between the rights of individual offenders, the rights of victims, and the concern of society for public safety and crime prevention.

1.5 Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.

2. The scope of non-custodial measures

2.1 The relevant provisions of the present Rules shall be applied to all persons subject to prosecution, trial or the execution of a sentence, at all stages of the administration of criminal justice. For the purposes of the Rules, these persons are referred to as “offenders”, irrespective of whether they are suspected, accused or sentenced.

2.2 The Rules shall be applied without any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status.

2.3 In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way that consistent sentencing remains possible.

2.4 The development of new non-custodial measures should be encouraged and closely monitored and their use systematically evaluated.

2.5 Consideration shall be given to dealing with offenders in the community, avoiding as far as possible resort to formal proceedings or trial by a court, in accordance with legal safeguards and the rule of law.

2.6 Non-custodial measures should be used in accordance with the principle of minimum intervention.

2.7 The use of non-custodial measures should be part of the movement towards depenalization and decriminalization instead of interfering with or delaying efforts in that direction.

3. Legal safeguards

3.1 The introduction, definition and application of non-custodial measures shall be prescribed by law.

3.2 The selection of a non-custodial measure shall be based on an assessment of established criteria in respect of both the nature and gravity of the offence and the personality, the background of the offender, the purposes of sentencing and the rights of victims.

3.3 Discretion by the judicial or other competent independent authority shall be exercised at all stages of the proceedings by ensuring full accountability and only in accordance with the rule of law.

3.4 Non-custodial measures imposing an obligation on the offender, applied before or instead of formal proceedings or trial, shall require the offender’s consent.

3.5 Decisions on the imposition of non-custodial measures shall be subject to review by a judicial or other competent independent authority, upon application by the offender.

3.6 The offender shall be entitled to make a request or complaint to a judicial or other competent independent authority on matters affecting his or her individual rights in the implementation of non-custodial measures.

3.7 Appropriate machinery shall be provided for the recourse and, if possible, redress of any grievance related to non-compliance with internationally recognized human rights.

3.8 Non-custodial measures shall not involve medical or psychological experimentation on, or undue risk of physical or mental injury to, the offender.

3.9 The dignity of the offender subject to non-custodial measures shall be protected at all times.

3.10 In the implementation of non-custodial measures, the offender's rights shall not be restricted further than was authorized by the competent authority that rendered the original decision.

3.11 In the application of non-custodial measures, the offender's right to privacy shall be respected, as shall be the right to privacy of the offender's family.

3.12 The offender's personal records shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the offender's case or to other duly authorized persons.

4. *Saving clause*

4.1 Nothing in the present Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners,²²⁰ the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules),²²¹ the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment²²² or any other human rights instruments and standards recognized by the international community and relating to the treatment of offenders and the protection of their basic human rights.

II. PRE-TRIAL STAGE

5. *Pre-trial dispositions*

5.1 Where appropriate and compatible with the legal system, the police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims. For the purpose of deciding upon the appropriateness of discharge or determination of proceedings, a set of established criteria shall be developed within each legal system. For minor cases the prosecutor may impose suitable non-custodial measures, as appropriate.

6. *Avoidance of pre-trial detention*

6.1 Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim.

6.2 Alternatives to pre-trial detention shall be employed at as early a stage as possible. Pre-trial detention shall last no longer than necessary to achieve the objectives stated under rule 6.1 and shall be administered humanely and with respect for the inherent dignity of human beings.

6.3 The offender shall have the right to appeal to a judicial or other competent independent authority in cases where pre-trial detention is employed.

III. TRIAL AND SENTENCING STAGE

7. *Social inquiry reports*

7.1 If the possibility of social inquiry reports exists, the judicial authority may avail itself of a report prepared by a competent, authorized official or agency. The report should contain social information on the offender that is relevant to the person's pattern of offending and current offences. It should also contain information and recommendations that are relevant to the sentencing procedure. The report shall be factual, objective and unbiased, with any expression of opinion clearly identified.

8. Sentencing dispositions

8.1 The judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in making its decision the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate.

8.2 Sentencing authorities may dispose of cases in the following ways:

- (a) Verbal sanctions, such as admonition, reprimand and warning;
- (b) Conditional discharge;
- (c) Status penalties;
- (d) Economic sanctions and monetary penalties, such as fines and day-fines;
- (e) Confiscation or an expropriation order;
- (f) Restitution to the victim or a compensation order;
- (g) Suspended or deferred sentence;
- (h) Probation and judicial supervision;
- (i) A community service order;
- (j) Referral to an attendance centre;
- (k) House arrest;
- (l) Any other mode of non-institutional treatment;
- (m) Some combination of the measures listed above.

IV. POST-SENTENCING STAGE

9. Post-servicing dispositions

9.1 The competent authority shall have at its disposal a wide range of post-sentencing alternatives in order to avoid institutionalization and to assist offenders in their early reintegration into society.

9.2 Post-sentencing dispositions may include:

- (a) Furlough and half-way houses;
- (b) Work or education release;
- (c) Various forms of parole;
- (d) Remission;
- (e) Pardon.

9.3 The decision on post-sentencing dispositions, except in the case of pardon, shall be subject to review by a judicial or other competent independent authority, upon application of the offender.

9.4 Any form of release from an institution to a non-custodial programme shall be considered at the earliest possible stage.

V. IMPLEMENTATION OF NON-CUSTODIAL MEASURES

10. Supervision

10.1 The purpose of supervision is to reduce reoffending and to assist the offender's integration into society in a way which minimizes the likelihood of a return to crime.

10.2 If a non-custodial measure entails supervision, the latter shall be carried out by a competent authority under the specific conditions prescribed by law.

10.3 Within the framework of a given non-custodial measure, the most suitable type of supervision and treatment should be determined for each individual case aimed at assisting the offender to work on his or her offending. Supervision and treatment should be periodically reviewed and adjusted as necessary.

10.4 Offenders should, when needed, be provided with psychological, social and material assistance and with opportunities to strengthen links with the community and facilitate their reintegration into society.

11. *Duration*

11.1 The duration of a non-custodial measure shall not exceed the period established by the competent authority in accordance with the law.

11.2 Provision may be made for early termination of the measure if the offender has responded favourably to it.

12. *Conditions*

12.1 If the competent authority shall determine the conditions to be observed by the offender, it should take into account both the needs of society and the needs and rights of the offender and the victim.

12.2 The conditions to be observed shall be practical, precise and as few as possible, and shall be aimed at reducing the likelihood of an offender relapsing into criminal behaviour and at increasing the offender's chances of social integration, taking into account the needs of the victim.

12.3 At the beginning of the application of a non-custodial measure, the offender shall receive an explanation, orally and in writing, of the conditions governing the application of the measure, including the offender's obligations and rights.

12.4 The conditions may be modified by the competent authority under the established statutory provisions, in accordance with the progress made by the offender.

13. *Treatment process*

13.1 Within the framework of a given non-custodial measure, in appropriate cases, various schemes, such as case-work, group therapy, residential programmes and the specialized treatment of various categories of offenders, should be developed to meet the needs of offenders more effectively.

13.2 Treatment should be conducted by professionals who have suitable training and practical experience.

13.3 When it is decided that treatment is necessary, efforts should be made to understand the offender's background, personality, aptitude, intelligence, values and, especially, the circumstances leading to the commission of the offence.

13.4 The competent authority may involve the community and social support systems in the application of non-custodial measures.

13.5 Case-load assignments shall be maintained as far as practicable at a manageable level to ensure the effective implementation of treatment programmes.

13.6 For each offender, a case record shall be established and maintained by the competent authority.

14. *Discipline and breach of conditions*

14.1 A breach of the conditions to be observed by the offender may result in a modification of revocation of the non-custodial measure.

14.2 The modification or revocation of the non-custodial measure shall be made by the competent authority; this shall be done only after a careful examination of the facts adduced by both the supervising officer and the offender.

14.3 The failure of a non-custodial measure should not automatically lead to the imposition of a custodial measure.

14.4 In the event of a modification or revocation of the non-custodial measure, the competent authority shall attempt to establish a suitable alternative non-custodial measure. A sentence of imprisonment may be imposed only in the absence of other suitable alternatives.

14.5 The power to arrest and detain the offender under supervision in cases where there is a breach of the conditions shall be prescribed by law.

14.6 Upon modification or revocation of the non-custodial measure, the offender shall have the right to appeal to a judicial or other competent independent authority.

VI. STAFF

15. *Recruitment*

15.1 There shall be no discrimination in the recruitment of staff on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status. The policy regarding staff recruitment should take into consideration national policies of affirmative action and reflect the diversity of the offenders to be supervised.

15.2 Persons appointed to apply non-custodial measures should be personally suitable and, whenever possible, have appropriate professional training and practical experience. Such qualifications shall be clearly specified.

15.3 To secure and retain qualified professional staff, appropriate service status, adequate salary and benefits commensurate with the nature of the work should be ensured and ample opportunities should be provided for professional growth and career development.

16. *Staff training*

16.1 The objective of training shall be to make clear to staff their responsibilities with regard to rehabilitating the offender, ensuring the offender's rights and protecting society. Training should also give staff an understanding of the need to cooperate in and coordinate activities with the agencies concerned.

16.2 Before entering duty, staff shall be given training that includes instruction on the nature of non-custodial measures, the purposes of supervision and the various modalities of the application of non-custodial measures.

16.3 After entering on duty, staff shall maintain and improve their knowledge and professional capacity by attending in-service training and refresher courses. Adequate facilities shall be made available for that purpose.

VII. VOLUNTEERS AND OTHER COMMUNITY RESOURCES

17. *Public participation*

17.1 Public participation should be encouraged as it is a major resource and one of the most important factors in improving ties between offenders and undergoing non-custodial measures and the family and community. It should complement the efforts of the criminal justice administration.

17.2 Public participation should be regarded as an opportunity for members of the community to contribute to the protection of their society.

18. *Public understanding and cooperation*

18.1 Government agencies, the private sector and the general public should be encouraged to support voluntary organizations that promote non-custodial measures.

18.2 Conferences, seminars, symposia and other activities should be regularly organized to stimulate awareness of the need for public participation in the application of non-custodial measures.

18.3 All forms of the mass media should be utilized to help to create a constructive public attitude, leading to activities conducive to a broader application of non-custodial treatment and the social integration of offenders.

18.4 Every effort should be made to inform the public of the importance of its role in the implementation of non-custodial measures.

19. *Volunteers*

19.1 Volunteers shall be carefully screened and recruited on the basis of their aptitude for and interest in the work involved. They shall be properly trained for the specific responsibilities to be discharged by them and shall have access to support and counselling from, and the opportunity to consult with, the competent authority.

19.2 Volunteers should encourage offenders and their families to develop meaningful ties with the community and a broader sphere of contact by providing counselling and other appropriate forms of assistance according to their capacity and the offenders' needs.

19.3 Volunteers shall be insured against accident, injury and public liability when carrying out their duties. They shall be reimbursed for authorized expenditures incurred in the course of their work. Public recognition should be extended to them for the services they render for the well-being of the community.

VIII. RESEARCH, PLANNING, POLICY FORMULATION AND EVALUATION

20. *Research and planning*

20.1 As an essential aspect of the planning process, efforts should be made to involve both public and private bodies in the organization and promotion of research on the non-custodial treatment of offenders.

20.2 Research on the problems that confront clients, practitioners, the community and policy makers should be carried out on a regular basis.

20.3 Research and information mechanisms should be built into the criminal justice system for the collection and analysis of data and statistics on the implementation of non-custodial treatment for offenders.

21. *Policy formulation and programme development*

21.1 Programmes for non-custodial measures should be systematically planned and implemented as an integral part of the criminal justice system within the national development process.

21.2 Regular evaluations should be carried out with a view to implementing non-custodial measures more effectively.

21.3 Periodic reviews should be conducted to assess the objectives, functioning and effectiveness of non-custodial measures.

22. *Linkages with relevant agencies and activities*

22.1 Suitable mechanisms should be evolved at various levels to facilitate the establishment of linkages between services responsible for non-custodial measures, other branches of the criminal justice system, social development and welfare agencies, both governmental and non-governmental, in such fields as health, housing, education and labour, and the mass media.

23. *International cooperation*

23.1 Efforts shall be made to promote scientific cooperation between countries in the field of non-institutional treatment. Research, training, technical assistance and the exchange of information among Member States on non-custodial measures should be strengthened, through the

United Nations institutes for the prevention of crime and the treatment of offenders, in close collaboration with the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs of the United Nations Secretariat.

23.2 Comparative studies and the harmonization of legislative provisions should be furthered to expand the range of non-institutional options and facilitate their application across national frontiers, in accordance with the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released,²²³

(6) *Basic principles for the treatment of prisoners*

By its resolution 45/111 of 14 December 1990,²²⁴ adopted on the recommendation of the Third Committee,²²⁵ the General Assembly, bearing in mind the long-standing concern of the United Nations for the humanization of criminal justice and the protection of human rights, and recognizing the usefulness of drafting a declaration on the human rights of prisoners, affirmed the Basic Principles for the Treatment of Prisoners, contained in the annex to the resolution, and requested the Secretary-General to bring them to the attention of Member States.

ANNEX

Basic Principles for the Treatment of Prisoners

1. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.
2. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. It is, however, desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require.
4. The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society.
5. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.
6. All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.
7. Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.
8. Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labour market and permit them to contribute to their own financial support and to that of their families.
9. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.
10. With the participation and help of the community and social institution, and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.
11. The above Principles shall be applied impartially.

*(7) United Nations Guidelines for the Prevention of Juvenile Delinquency
(The Riyadh Guidelines)*

By its resolution 45/112 of 14 December 1990,²²⁶ adopted on the recommendation of the Third Committee,²²⁷ the General Assembly, taking into account the benefits of progressive policies for the prevention of delinquency and for the welfare of the community, adopted the United Nations Guidelines for the Prevention of Juvenile Delinquency, contained in the annex to the resolution, to be designated “the Riyadh Guidelines”, and called upon Member States, in their comprehensive crime prevention plans, to apply the Riyadh Guidelines in national law, policy and practice and to bring them to the attention of relevant authorities, including policy makers, juvenile justice personnel, educators, the mass media, practitioners and scholars.

ANNEX

**United Nations Guidelines for the Prevention of Juvenile Delinquency
(The Riyadh Guidelines)**

I. FUNDAMENTAL PRINCIPLES

1. The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes.

2. The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for the promotion of their personality from early childhood.

3. For the purposes of the interpretation of the present Guidelines, a child-centred orientation should be pursued. Young persons should have an active role in partnership within society and should not be considered as mere objects of socialization or control.

4. In the implementation of the present Guidelines, in accordance with national legal systems, the well-being of young persons from their early childhood should be the focus of any preventive programme.

5. The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others. Such policies and measures should involve:

(a) The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection;

(b) Specialized philosophies and approaches for delinquency prevention, on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions;

(c) Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity;

(d) Safeguarding the well-being, development, rights and interests of all young persons;

(e) Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood;

(f) Awareness that, in the predominant opinion of experts, labelling a young person as “deviant”, “delinquent” or “pre-delinquent” often contributes to the development of a consistent pattern of undesirable behaviour by young persons.

6. Community-based services and programmes should be developed for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies of social control should only be utilized as a means of last resort.

II. SCOPE OF THE GUIDELINES

7. The present Guidelines should be interpreted and implemented within the broad framework of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Declaration of the Rights of the Child and the Convention on the Rights of the Child, and in the context of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)²²¹ as well as other instruments and norms relating to the rights, interests and well-being of all children and young persons.

8. The present Guidelines should also be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

III. GENERAL PREVENTION

9. Comprehensive prevention plans should be instituted at every level of government and include the following:

(a) In-depth analyses of the problem and inventories of programmes, services, facilities and resources available;

(b) Well-defined responsibilities for the qualified agencies, institutions and personnel involved in preventive efforts;

(c) Mechanisms for the appropriate coordination of prevention efforts between governmental and non-governmental agencies;

(d) Policies, programmes and strategies based on prognostic studies to be continuously monitored and carefully evaluated in the course of implementation;

(e) Methods for effectively reducing the opportunity to commit delinquent acts;

(f) Community involvement through a wide range of services and programmes;

(g) Close interdisciplinary cooperation between national, state, provincial and local governments, with the involvement of the private sector, representative citizens of the community to be served, and labour, child-care, health education, social, law enforcement and judicial agencies in taking concerted action to prevent juvenile delinquency and youth crime;

(h) Youth participation in delinquency prevention policies and processes, including recourse to community resources, youth self-help, and victim compensation and assistance programmes;

(i) Specialized personnel at all levels.

IV. SOCIALIZATION PROCESSES

10. Emphasis should be placed on preventive policies facilitating the successful socialization and integration of all children and young persons, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. Due respect should be given to the proper personal development of children and young persons, and they should be accepted as full and equal partners in socialization and integration processes.

A. FAMILY

11. Every society should place a high priority on the needs and well-being of the family and of all its members.

12. Since the family is the central unit responsible for the primary socialization of children, governmental and social efforts to preserve the integrity of the family, including the

extended family, should be pursued. The society has a responsibility to assist the family in providing care and protection and in ensuring the physical and mental well-being of children. Adequate arrangements including day-care should be provided.

13. Governments should establish policies that are conducive to the bringing up of children in stable and settled family environments. Families in need of assistance in the resolution of conditions of instability or conflict should be provided with requisite services.

14. Where a stable and settled family environment is lacking and when community efforts to assist parents in this regard have failed and the extended family cannot fulfil this role, alternative placements, including foster care and adoption, should be considered. Such placements should replicate, to the extent possible, a stable and settled family environment, while, at the same time, establishing a sense of permanency for children, thus avoiding problems associated with "foster drift".

15. Special attention should be given to children of families affected by problems brought about by rapid and uneven economic, social and cultural change, in particular the children of indigenous, migrant and refugee families. As such changes may disrupt the social capacity of the family to secure the traditional rearing and nurturing of children, often as a result of role and culture conflict, innovative and socially constructive modalities for the socialization of children have to be designed.

16. Measures should be taken and programmes developed to provide families with the opportunity to learn about parental roles and obligations as regards child development and child care, promoting positive parent-child relationships, sensitizing parents to the problems of children and young persons and encouraging their involvement in family and community-based activities.

17. Governments should take measures to promote family cohesion and harmony and to discourage the separation of children from their parents, unless circumstances affecting the welfare and future of the child leave no viable alternative.

18. It is important to emphasize the socialization function of the family and extended family; it is also equally important to recognize the future role, responsibilities, participation and partnership of young persons in society.

19. In ensuring the right of the child to proper socialization, Governments and other agencies should rely on existing social and legal agencies, but, whenever traditional institutions and customs are no longer effective, they should also provide and allow for innovative measures.

B. EDUCATION

20. Governments are under an obligation to make public education accessible to all young persons.

21. Education systems should, in addition to their academic and vocational training activities, devote particular attention to the following:

(a) Teaching of basic values and developing respect for the child's own cultural identity and patterns, for the social values of the country in which the child is living, for civilizations different from the child's own and for human rights and fundamental freedoms;

(b) Promotion and development of the personality, talents and mental and physical abilities of young people to their fullest potential;

(c) Involvement of young persons as active and effective participants in, rather than mere objects of, the educational process;

(d) Undertaking activities that foster a sense of identity with and of belonging to the school and the community;

(e) Encouragement of young persons to understand and respect diverse views and opinions, as well as cultural and other differences;

(f) Provision of information and guidance regarding vocational training, employment opportunities and career development;

(g) Provision of positive emotional support to young persons and the avoidance of psychological maltreatment;

(h) Avoidance of harsh disciplinary measures, particularly corporal punishment.

22. Educational systems should seek to work together with parents, community organizations and agencies concerned with the activities of young persons.

23. Young persons and their families should be informed about the law and their rights and responsibilities under the law, as well as the universal value system, including United Nations instruments.

24. Educational systems should extend particular care and attention to young persons who are at social risk. Specialized prevention programmes and educational materials, curricula, approaches and tools should be developed and fully utilized.

25. Special attention should be given to comprehensive policies and strategies for the prevention of alcohol, drug and other substance abuse by young persons. Teachers and other professionals should be equipped and trained to prevent and deal with these problems. Information on the use and abuse of drugs, including alcohol, should be made available to the student body.

26. Schools should serve as resource and referral centres for the provision of medical, counselling and other services to young persons, particularly those with special needs and suffering from abuse, neglect, victimization and exploitation.

27. Through a variety of educational programmes, teachers and other adults and the student body should be sensitized to the problems, needs and perceptions of young persons, particularly those belonging to underprivileged, disadvantaged, ethnic or other minority and low-income groups.

28. School systems should attempt to meet and promote the highest professional and educational standards with respect to curricula, teaching and learning methods and approaches, and the recruitment and training of qualified teachers. Regular monitoring and assessment of performance by the appropriate professional organizations and authorities should be ensured.

29. School systems should plan, develop and implement extra-curricular activities of interest to young persons, in cooperation with community groups.

30. Special assistance should be given to children and young persons who find it difficult to comply with attendance codes, and to "drop-outs".

31. Schools should promote policies and rules that are fair and just; students should be represented in bodies formulating school policy, including policy on discipline, and decision-making.

C. COMMUNITY

32. Community-based services and programmes which respond to the special needs, problems, interests and concerns of young persons and which offer appropriate counselling and guidance to young persons and their families should be developed, or strengthened where they exist.

33. Communities should provide, or strengthen where they exist, a wide range of community-based support measures for young persons, including community development centres, recreational facilities and services to respond to the special problems of children who are at social risk. In providing these helping measures, respect for individual rights should be ensured.

34. Special facilities should be set up to provide adequate shelter for young persons who are no longer able to live at home or who do not have homes to live in.

35. A range of services and helping measures should be provided to deal with the difficulties experienced by young persons in the transition to adulthood. Such services should include special programmes for young abusers which emphasize care, counselling, assistance and therapy-oriented interventions.

36. Voluntary organizations providing services for young persons should be given financial and other support by Governments and other institutions.

37. Youth organizations should be created or strengthened at the local level and given full participatory status in the management of community affairs. These organizations should encourage youth to organize collective and voluntary projects, particularly projects aimed at helping young persons in need of assistance.

38. Government agencies should take special responsibility and provide necessary services for homeless or street children; information about local facilities, accommodation, employment and other forms and sources of help should be made readily available to young persons.

39. A wide range of recreational facilities and services of particular interest to young persons should be established and made easily accessible to them.

D. MASS MEDIA

40. The mass media should be encouraged to ensure that young persons have access to information and material from a diversity of national and international sources.

41. The mass media should be encouraged to portray the positive contribution of young persons to society.

42. The mass media should be encouraged to disseminate information on the existence of services, facilities and opportunities for young persons in society.

43. The mass media generally, and the television and film media in particular, should be encouraged to minimize the level of pornography, drugs and violence portrayed and to display violence and exploitation disfavouredly, as well as to avoid demeaning and degrading presentations, especially of children, women and interpersonal relations, and to promote egalitarian principles and roles.

44. The mass media should be aware of its extensive social role and responsibility, as well as its influence, in communications relating to youthful drug and alcohol abuse. It should use its power for drug abuse prevention by relaying consistent messages through a balanced approach. Effective drug awareness campaigns at all levels should be promoted.

V. SOCIAL POLICY

45. Government agencies should give high priority to plans and programmes for young persons and should provide sufficient funds and other resources for the effective delivery of services, facilities and staff for adequate medical and mental health care, nutrition, housing and other relevant services, including drug and alcohol abuse prevention and treatment, ensuring that such resources reach and actually benefit young persons.

46. The institutionalization of young persons should be a measure of last resort and for the minimum necessary period, and the best interests of the young person should be of paramount importance. Criteria authorizing formal intervention of this type should be strictly defined and limited to the following situations: (a) where the child or young person has suffered harm that has been inflicted by the parents or guardians; (b) where the child or young person has been sexually, physically or emotionally abused by the parents or guardians; (c) where the child or young person has been neglected, abandoned or exploited by the parents or guardians; (d) where the child or young person is threatened by physical or moral danger due to the behaviour of the parents or guardians; and (e) where a serious physical or psychological danger to the child or young person has manifested itself in his or her own behaviour and neither the parents, the guardians, the juvenile himself or herself nor non-residential community services can meet the danger by means other than institutionalization.

47. Government agencies should provide young persons with the opportunity of continuing in full-time education, funded by the State where parents or guardians are unable to support the young persons, and of receiving work experience.

48. Programmes to prevent delinquency should be planned and developed on the basis of reliable, scientific research findings, and periodically monitored, evaluated and adjusted accordingly.

49. Scientific information should be disseminated to the professional community and to the public at large about the sort of behaviour or situation which indicates or may result in physical and psychological victimization, harm and abuse, as well as exploitation, of young persons.

50. Generally, participation in plans and programmes should be voluntary. Young persons themselves should be involved in their formulation, development and implementation.

51. Governments should begin or continue to explore, develop and implement policies, measures and strategies within and outside the criminal justice system to prevent domestic violence against and affecting young persons and to ensure fair treatment to these victims of domestic violence.

VI. LEGISLATION AND JUVENILE JUSTICE ADMINISTRATION

52. Governments should enact and enforce specific laws and procedures to promote and protect the rights and well-being of all young persons.

53. Legislation preventing the victimization, abuse, exploitation and the use for criminal activities of children and young persons should be enacted and enforced.

54. No child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions.

55. Legislation and enforcement aimed at restricting and controlling accessibility of weapons of any sort to children and young persons should be pursued.

56. In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.

57. Consideration should be given to the establishment of an office of ombudsman or similar independent organ, which would ensure that the status, rights and interests of young persons are upheld and that proper referral to available services is made. The ombudsman or other organ designated would also supervise the implementation of the Riyadh Guidelines, the Beijing Rules and the Rules for the Protection of Juveniles Deprived of their Liberty. The ombudsman or other organ would, at regular intervals, publish a report on the progress made and on the difficulties encountered in the implementation of the instrument. Child advocacy services should also be established.

58. Law enforcement and other relevant personnel, of both sexes, should be trained to respond to the special needs of young persons and should be familiar with and use, to the maximum extent possible, programmes and referral possibilities for the diversion of young persons from the justice system.

59. Legislation should be enacted and strictly enforced to protect children and young persons from drug abuse and drug traffickers.

VII. RESEARCH, POLICY DEVELOPMENT AND COORDINATION

60. Efforts should be made and appropriate mechanisms established to promote, on both a multidisciplinary and an intradisciplinary basis, interaction and co-ordination between economic, social, educational and health agencies and services, the justice system, youth, community and development agencies and other relevant institutions.

61. The exchange of information, experience and expertise gained through projects, programmes, practices and initiatives relating to youth crime, delinquency prevention and juvenile justice should be intensified at the national, regional and international levels.

62. Regional and international cooperation on matters of youth crime, delinquency prevention and juvenile justice involving practitioners, experts and decision makers should be further developed and strengthened.

63. Technical and scientific cooperation on practical and policy-related matters, particularly in training, pilot and demonstration projects, and on specific issues concerning the preven-

tion of youth crime and juvenile delinquency should be strongly supported by all Governments, the United Nations system and other concerned organizations.

64. Collaboration should be encouraged in undertaking scientific research with respect to effective modalities for youth crime and juvenile delinquency prevention and the findings of such research should be widely disseminated and evaluated.

65. Appropriate United Nations bodies, institutes, agencies and offices should pursue close collaboration and co-ordination on various questions related to children, juvenile justice and youth crime and juvenile delinquency prevention.

66. On the basis of the present Guidelines, the United Nations Secretariat, in co-operation with interested institutions, should play an active role in the conduct of research, scientific collaboration, the formulation of policy options and the review and monitoring of their implementation, and should serve as a source of reliable information on effective modalities for delinquency prevention.

(8) *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*

By its resolution 45/113 of 14 December 1990,²²⁸ adopted on the recommendation of the Third Committee,²²⁹ the General Assembly recognized that, because of their high vulnerability, juveniles deprived of their liberty required special attention and protection and that their rights and well-being should be guaranteed during and after the period when they were deprived of their liberty; adopted the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, contained in the annex to the resolution; and invited Member States to adapt, wherever necessary, their national legislation, policies and practices to the spirit of the Rules, and to bring them to the attention of relevant authorities and the public in general.

ANNEX

United Nations Rules for the Protection of Juveniles Deprived of Their Liberty

I. FUNDAMENTAL PERSPECTIVES

1. The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.

2. Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.

3. The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.

4. The Rules should be applied impartially, without discrimination of any kind as to race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected.

5. The Rules are designed to serve as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system.

6. The Rules should be made readily available to juvenile justice personnel in their national languages. Juveniles who are not fluent in the language spoken by the personnel of the

detention facility should have the right to the services of an interpreter free of charge whenever necessary, in particular during medical examinations and disciplinary proceedings.

7. Where appropriate, States should incorporate the Rules into their legislation or amend it accordingly and provide effective remedies for their breach, including compensation when injuries are inflicted on juveniles. States should also monitor the application of the Rules.

8. The competent authorities should constantly seek to increase the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps should be taken to foster open contacts between the juveniles and the local community.

9. Nothing in the Rules should be interpreted as precluding the application of the relevant United Nations and human rights instruments and standards, recognized by the international community, that are more conducive to ensuring the rights, care and protection of juveniles, children and all young persons.

10. In the event that the practical application of particular rules contained in sections II to V, inclusive, presents any conflict with the rules contained in the present section, compliance with the latter shall be regarded as the predominant requirement.

II. SCOPE AND APPLICATION OF THE RULES

11. For the purposes of the Rules, the following definitions should apply:

(a) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;

(b) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

12. The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

13. Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.

14. The protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the competent authority, while the objectives of social integration should be secured by regular inspections and other means of control carried out, according to international standards, national laws and regulations, by a duly constituted body authorized to visit the juveniles and not belonging to the detention facility.

15. The Rules apply to all types and forms of detention facilities in which juveniles are deprived of their liberty. Sections I, II, IV and V of the Rules apply to all detention facilities and institutional settings in which juveniles are detained, and section III applies specifically to juveniles under arrest or awaiting trial.

16. The Rules shall be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

III. JUVENILES UNDER ARREST OR AWAITING TRIAL

17. Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.

18. The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary, and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:

(a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications;

(b) Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention;

(c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

IV. THE MANAGEMENT OF JUVENILE FACILITIES

A. RECORDS

19. All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorized persons and classified in such a way as to be easily understood. Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request. Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged.

20. No juvenile should be received in any detention facility without a valid commitment order of a judicial, administrative or other public authority. The details of this order should be immediately entered in the register. No juvenile should be detained in any facility where there is no such register.

B. ADMISSION, REGISTRATION, MOVEMENT AND TRANSFER

21. In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:

(a) Information on the identity of the juvenile;

(b) The fact of and reasons for commitment and the authority therefor;

(c) The day and hour of admission, transfer and release;

(d) Details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment;

(e) Details of known physical and mental health problems, including drug and alcohol abuse.

22. The information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned.

23. As soon as possible after reception, full reports and relevant information on the personal situation and circumstances of each juvenile should be drawn up and submitted to the administration.

24. On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.

25. All juveniles should be helped to understand the regulations governing the internal organization of the facility, the goals and methodology of the care provided, the disciplinary requirements and procedures, other authorized methods of seeking information and of making complaints, and all such other matters as are necessary to enable them to understand fully their rights and obligations during detention.

26. The transport of juveniles should be carried out at the expense of the administration in conveyances with adequate ventilation and light, in conditions that should in no way subject them to hardship or indignity. Juveniles should not be transferred from one facility to another arbitrarily.

C. CLASSIFICATION AND PLACEMENT

27. As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be pursued. When special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualized treatment plan specifying treatment objectives and time-frame and the means, stages and delays with which the objectives should be approached.

28. The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.

29. In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned.

30. Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. The number of juveniles detained in closed facilities should be small enough to enable individualized treatment. Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community.

D. PHYSICAL ENVIRONMENT AND ACCOMMODATION

31. Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.

32. The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. The design and structure of juvenile detention facilities should be such as to minimize the risk of fire and to ensure safe evacuation from the premises. There should be an effective alarm system in case of fire, as well as formal and drilled procedures to ensure the safety of the juveniles. Detention facilities should not be located in areas where there are known health or other hazards or risks.

33. Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, account being taken of local standards. During sleeping hours there should be

regular, unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness.

34. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.

35. The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected. Personal effects that the juvenile does not choose to retain or that are confiscated should be placed in safe custody. An inventory thereof should be signed by the juvenile. Steps should be taken to keep them in good condition. All such articles and money should be returned to the juvenile on release, except in so far as he or she has been authorized to spend money or send such property out of the facility. If a juvenile receives or is found in possession of any medicine, the medical officer should decide what use should be made of it.

36. To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing.

37. Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.

E. EDUCATION, VOCATIONAL TRAINING AND WORK

38. Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of *juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties* should have the right to special education.

39. Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.

40. Diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized.

41. Every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it.

42. Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.

43. With due regard to proper vocational selection and to the requirements of institutional administration, juveniles should be able to choose the type of work they wish to perform.

44. All protective national and international standards applicable to child labour and young workers should apply to juveniles deprived of their liberty.

45. Wherever possible, juveniles should be provided with the opportunity to perform remunerated labour, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they

return to their communities. The type of work should be such as to provide appropriate training that will be of benefit to the juveniles following release. The organization and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for the conditions of normal occupational life.

46. Every juvenile who performs work should have the right to an equitable remuneration. The interests of the juveniles and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party. Part of the earnings of a juvenile should normally be set aside to constitute a savings fund to be handed over to the juvenile on release. The juvenile should have the right to use the remainder of those earnings to purchase articles for his or her own use or to indemnify the victim injured by his or her offence or to send it to his or her family or other persons outside the detention facility.

F. RECREATION

47. Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it.

G. RELIGION

48. Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request. Every juvenile should have the right to receive visits from a qualified representative of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counselling or indoctrination.

H. MEDICAL CARE

49. Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. All such medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community.

50. Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention.

51. The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties should be examined promptly by a medical officer.

52. Any medical officer who has reason to believe that the physical or mental health of a juvenile has been or will be injuriously affected by continued detention, a hunger strike or any

condition of detention should report this fact immediately to the director of the detention facility in question and to the independent authority responsible for safeguarding the well-being of the juvenile.

53. A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.

54. Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.

55. Medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned. In particular, they must not be administered with a view to eliciting information or a confession, as a punishment or as a means of restraint. Juveniles shall never be testees in the experimental use of drugs and treatment. The administration of any drug should always be authorized and carried out by qualified medical personnel.

I. NOTIFICATION OF ILLNESS, INJURY AND DEATH

56. The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. The director of the detention facility should notify immediately the family or guardian of the juvenile concerned, or other designated person, in case of death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours. Notification should also be given to the consular authorities of the State of which a foreign juvenile is a citizen.

57. Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative should have the right to inspect the death certificate, see the body and determine the method of disposal of the body. Upon the death of a juvenile in detention, there should be an independent inquiry into the causes of death, the report of which should be made accessible to the nearest relative. This inquiry should also be made when the death of a juvenile occurs within six months from the date of his or her release from the detention facility and there is reason to believe that the death is related to the period of detention.

58. A juvenile should be informed at the earliest possible time of the death, serious illness or injury of any immediate family member and should be provided with the opportunity to attend the funeral of the deceased or go to the bedside of a critically ill relative.

I. CONTACTS WITH THE WIDER COMMUNITY

59. Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons. Should the juvenile be serving a sentence, the time spent outside a detention facility should be counted as part of the period of sentence.

60. Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel.

61. Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be

assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence.

62. Juveniles should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, through access to radio and television programmes and motion pictures, and through the visits of the representatives of any lawful club or organization in which the juvenile is interested.

K. LIMITATIONS OF PHYSICAL RESTRAINT AND THE USE OF FORCE

63. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.

64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.

65. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

L. DISCIPLINARY PROCEDURES

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.

67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.

68. Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:

- (a) Conduct constituting a disciplinary offence;
- (b) Type and duration of disciplinary sanctions that may be inflicted;
- (c) The authority competent to impose such sanctions;
- (d) The authority competent to consider appeals.

69. A report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay. The competent authority should conduct a thorough examination of the case.

70. No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.

71. No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes.

M. INSPECTION AND COMPLAINTS

72. Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function. Inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities.

73. Qualified medical officers attached to the inspecting authority or the public health service should participate in the inspections, evaluating compliance with the rules concerning the physical environment, hygiene, accommodation, food, exercise and medical services, as well as any other aspect or conditions of institutional life that affect the physical and mental health of juveniles. Every juvenile should have the right to talk in confidence to any inspecting officer.

74. After completing the inspection, the inspector should be required to submit a report on the findings. The report should include an evaluation of the compliance of the detention facilities with the present rules and relevant provisions of national law, and recommendations regarding any steps considered necessary to ensure compliance with them. Any facts discovered by an inspector that appear to indicate that a violation of legal provisions concerning the rights of juveniles or the operation of a juvenile detention facility has occurred should be communicated to the competent authorities for investigation and prosecution.

75. Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative.

76. Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay.

77. Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements.

78. Every juvenile should have the right to request assistance from family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints.

N. RETURN TO THE COMMUNITY

79. All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.

80. Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community.

V. PERSONNEL

81. Personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. These and other specialist staff should normally be employed on a permanent basis. This should

not preclude part-time or volunteer workers when the level of support and training they can provide is appropriate and beneficial. Detention facilities should make use of all remedial, educational, moral, spiritual, and other resources and forms of assistance that are appropriate and available in the community, according to the individual needs and problems of detained juveniles.

82. The administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.

83. To secure the foregoing ends, personnel should be appointed as professional officers with adequate remuneration to attract and retain suitable women and men. The personnel of juvenile detention facilities should be continually encouraged to fulfil their duties and obligations in a humane, committed, professional, fair and efficient manner, to conduct themselves at all times in such a way as to deserve and gain the respect of the juveniles, and to provide juveniles with a positive role model and perspective.

84. The administration should introduce forms of organization and management that facilitate communications between different categories of staff in each detention facility so as to enhance co-operation between the various services engaged in the care of juveniles, as well as between staff and the administration, with a view to ensuring that staff directly in contact with juveniles are able to function in conditions favourable to the efficient fulfilment of their duties.

85. The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules. The personnel should maintain and improve their knowledge and professional capacity by attending courses of in-service training, to be organized at suitable intervals throughout their career.

86. The director of a facility should be adequately qualified for his or her task, with administrative ability and suitable training and experience, and should carry out his or her duties on a full-time basis.

87. In the performance of their duties, personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all juveniles, in particular, as follows:

(a) No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever;

(b) All personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities;

(c) All personnel should respect the present Rules. Personnel who have reason to believe that a serious violation of the present Rules has occurred or is about to occur should report the matter to their superior authorities or organs vested with reviewing or remedial power;

(d) All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required;

(e) All personnel should respect the right of the juvenile to privacy, and in particular should safeguard all confidential matters concerning juveniles or their families learned as a result of their professional capacity;

(f) All personnel should seek to minimize any differences between life inside and outside the detention facility which tend to lessen due respect for the dignity of juveniles as human beings.

(9) *Model Treaty on Extradition*

By its resolution 45/116 of 14 December 1990,²³⁰ adopted on the recommendation of the Third Committee,²³¹ the General Assembly, recognizing the importance of a model treaty on extradition as an effective way of dealing with the complex aspects and serious consequences of crime, especially in its new forms and dimensions, adopted the Model Treaty on Extradition contained in the annex to the resolution as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral agreements aimed at improving cooperation in matters of crime prevention and criminal justice and invited Member States, if they had not yet established treaty relations with other States in the area of extradition, or if they wished to revise existing treaty relations, to take into account, whenever doing so, the Model Treaty on Extradition.

ANNEX

Model Treaty on Extradition

The _____ and the _____

Desirous of making more effective the co-operation of the two countries in the control of crime by concluding a treaty on extradition,

Have agreed as follows:

Article 1

OBLIGATION TO EXTRADITE

Each Party agrees to extradite to the other, upon request and subject to the provisions of the present Treaty, any person who is wanted in the requesting State for prosecution for an extraditable offence or for the imposition or enforcement of a sentence in respect of such an offence.²³²

Article 2

EXTRADITABLE OFFENCES

1. For the purposes of the present Treaty, extraditable offences are offences that are punishable under the laws of both Parties by imprisonment or other deprivation of liberty for a maximum period of at least [one/two] year(s), or by a more severe penalty. Where the request for extradition relates to a person who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty imposed for such an offence, extradition shall be granted only if a period of at least [four/six] months of such sentence remains to be served.

2. In determining whether an offence is an offence punishable under the laws of both Parties, it shall not matter whether:

(a) The laws of the Parties place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology;

(b) Under the laws of the Parties the constituent elements of the offence differ, it being understood that the totality of the acts or omissions as presented by the requesting State shall be taken into account.

3. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, exchange control or other revenue matters, extradition may not be refused on the ground that the law of the requested State does not impose the same kind of tax or duty or does not contain a tax, customs duty or exchange regulation of the same kind as the law of the requesting State.²³³

4. If the request for extradition includes several separate offences each of which is punishable under the laws of both Parties, but some of which do not fulfil the other conditions set out in

paragraph 1 of the present article, the requested Party may grant extradition for the latter offences provided that the person is to be extradited for at least one extraditable offence.

Article 3

MANDATORY GROUNDS FOR REFUSAL

Extradition shall not be granted in any of the following circumstances:

(a) If the offence for which extradition is requested is regarded by the requested State as an offence of a political nature;²³⁴

(b) If the requested State has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinions, sex or status, or that that person's position may be prejudiced for any of those reasons;

(c) If the offence for which extradition is requested is an offence under military law, which is not also an offence under ordinary criminal law;

(d) If there has been a final judgement rendered against the person in the requested State in respect of the offence for which the person's extradition is requested;

(e) If the person whose extradition is requested has, under the law of either Party, become immune from prosecution or punishment for any reason, including lapse of time or amnesty;²³⁵

(f) If the person whose extradition is requested has been or would be subjected in the requesting State to torture or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in the International Covenant on Civil and Political Rights, article 14;

(g) If the judgement of the requesting State has been rendered *in absentia*, the convicted person has not had sufficient notice of the trial or the opportunity to arrange for his or her defence and he has not had or will not have the opportunity to have the case retried in his or her presence.²³⁶

Article 4

OPTIONAL GROUNDS FOR REFUSAL

Extradition may be refused in any of the following circumstances:

(a) If the person whose extradition is requested is a national of the requested State. Where extradition is refused on this ground, the requested State shall, if the other State so requests, submit the case to its competent authorities with a view to taking appropriate action against the person in respect of the offence for which extradition had been requested;

(b) If the competent authorities of the requested State have decided either not to institute or to terminate proceedings against the person for the offence in respect of which extradition is requested;

(c) If a prosecution in respect of the offence for which extradition is requested is pending in the requested State against the person whose extradition is requested;

(d) If the offence for which extradition is requested carries the death penalty under the law of the requesting State, unless that State gives such assurance as the requested State considers sufficient that the death penalty will not be imposed or, if imposed, will not be carried out;²³⁷

(e) If the offence for which extradition is requested has been committed outside the territory of either Party and the law of the requested State does not provide for jurisdiction over such an offence committed outside its territory in comparable circumstances;

(f) If the offence for which extradition is requested is regarded under the law of the requested State as having been committed in whole or in part within that State.²³⁸ Where extradition is refused on this ground, the requested State shall, if the other State so requests, submit the case to its competent authorities with a view to taking appropriate action against the person for the offence for which extradition had been requested;

(g) If the person whose extradition is requested has been sentenced or would be liable to be tried or sentenced in the requesting State by an extraordinary or *ad hoc* court or tribunal;

(h) If the requested State, while also taking into account the nature of the offence and the interests of the requesting State, considers that, in the circumstances of the case, the extradition of that person would be incompatible with humanitarian considerations in view of age, health or other personal circumstances of that person.

Article 5

CHANNELS OF COMMUNICATION AND REQUIRED DOCUMENTS

1. A request for extradition shall be made in writing. The request, supporting documents and subsequent communications shall be transmitted through the diplomatic channel, directly between the ministries of justice or any other authorities designated by the Parties.

2. A request for extradition shall be accompanied by the following:

(a) In all cases,

(i) As accurate a description as possible of the person sought, together with any other information that may help to establish that person's identity, nationality and location;

(ii) The text of the relevant provision of the law creating the offence or, where necessary, a statement of the law relevant to the offence and a statement of the penalty that can be imposed for the offence;

(b) If the person is accused of an offence, by a warrant issued by a court or other competent judicial authority for the arrest of the person or a certified copy of that warrant, a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the alleged offence, including an indication of the time and place of its commission;²³⁹

(c) If the person has been convicted of an offence, by a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the offence and by the original or certified copy of the judgement or any other document setting out the conviction and the sentence imposed, the fact that the sentence is enforceable, and the extent to which the sentence remains to be served;

(d) If the person has been convicted of an offence in his or her absence, in addition to the documents set out in paragraph 2 (c) of the present article, by a statement as to the legal means available to the person to prepare his or her defence or to have the case retried in his or her presence;

(e) If the person has been convicted of an offence but no sentence has been imposed, by a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the offence and by a document setting out the conviction and a statement affirming that there is an intention to impose a sentence.

3. The documents submitted in support of a request for extradition shall be accompanied by a translation into the language of the requested State or in another language acceptable to that State.

Article 6

SIMPLIFIED EXTRADITION PROCEDURE

The requested State, if not precluded by its law, may grant extradition after receipt of a request for provisional arrest, provided that the person sought explicitly consents before a competent authority.

Article 7

CERTIFICATION AND AUTHENTICATION

Except as provided by the present Treaty, a request for extradition and the documents in support thereof, as well as documents or other material supplied in response to such a request, shall not require certification or authentication.²⁴⁰

Article 8

ADDITIONAL INFORMATION

If the requested State considers that the information provided in support of a request for extradition is not sufficient, it may request that additional information be furnished within such reasonable time as it specifies.

Article 9

PROVISIONAL ARREST

1. In case of urgency the requesting State may apply for the provisional arrest of the person sought pending the presentation of the request for extradition. The application shall be transmitted by means of the facilities of the International Criminal Police Organization, by post or telegraph or by any other means affording a record in writing.

2. The application shall contain a description of the person sought, a statement that extradition is to be requested, a statement of the existence of one of the documents mentioned in paragraph 2 of article 5 of the present Treaty, authorizing the apprehension of the person, a statement of the punishment that can be or has been imposed for the offence, including the time left to be served and a concise statement of the facts of the case, and a statement of the location, where known, of the person.

3. The requested State shall decide on the application in accordance with its law and communicate its decision to the requesting State without delay.

4. The person arrested upon such an application shall be set at liberty upon the expiration of [40] days from the date of arrest if a request for extradition, supported by the relevant documents specified in paragraph 2 of article 5 of the present Treaty, has not been received. The present paragraph does not preclude the possibility of conditional release of the person prior to the expiration of the [40] days.

5. The release of the person pursuant to paragraph 4 of the present article shall not prevent re-arrest and institution of proceedings with a view to extraditing the person sought if the request and supporting documents are subsequently received.

Article 10

DECISION ON THE REQUEST

1. The requested State shall deal with the request for extradition pursuant to procedures provided by its own law, and shall promptly communicate its decision to the requesting State.

2. Reasons shall be given for any complete or partial refusal of the request.

Article 11

SURRENDER OF THE PERSON

1. Upon being informed that extradition has been granted, the Parties shall, without undue delay, arrange for the surrender of the person sought and the requested State shall inform the requesting State of the length of time for which the person sought was detained with a view to surrender.

2. The person shall be removed from the territory of the requested State within such reasonable period as the requested State specifies and, if the person is not removed within that

period, the requested State may release the person and may refuse to extradite that person for the same offence.

3. If circumstances beyond its control prevent a Party from surrendering or removing the person to be extradited, it shall notify the other Party. The two Parties shall mutually decide upon a new state of surrender, and the provisions of paragraph 2 of the present article shall apply.

Article 12

POSTPONED OR CONDITIONAL SURRENDER

1. The requested State may, after making its decision on the request for extradition, postpone the surrender of a person sought, in order to proceed against that person, or, if that person has already been convicted, in order to enforce a sentence imposed for an offence other than that for which extradition is sought. In such a case the requested State shall advise the requesting State accordingly.

2. The requested State may, instead of postponing surrender, temporarily surrender the person sought to the requesting State in accordance with conditions to be determined between the Parties.

Article 13

SURRENDER OF PROPERTY

1. To the extent permitted under the law of the requested State and subject to the rights of third parties, which shall be duly respected, all property found in the requested State that has been acquired as a result of the offence or that may be required as evidence shall, if the requesting State so requests, be surrendered if extradition is granted.

2. The said property may, if the requesting State so requests, be surrendered to the requesting State even if the extradition agreed to cannot be carried out.

3. When the said property is liable to seizure or confiscation in the requested State, it may retain it or temporarily hand it over.

4. When the law of the requested State or the protection of the rights of third parties so require, any property so surrendered shall be returned to the requested State free of charge after the completion of the proceedings, if the State so requests.

Article 14

RULE OF SPECIALITY

1. A person extradited under the present Treaty shall not be proceeded against, sentenced, detained, re-extradited to a third State, or subjected to any other restriction of personal liberty in the territory of the requesting State for any offence committed before surrender other than:

(a) An offence for which extradition was granted;

(b) Any other offence in respect of which the requested State consents.²⁴¹ Consent shall be given if the offence for which it is requested is itself subject to extradition in accordance with the present Treaty.²⁴²

2. A request for the consent of the requested State under the present article shall be accompanied by the documents mentioned in paragraph 2 of article 5 of the present Treaty and a legal record of any statement made by the extradited person with respect to the offence.

3. Paragraph 1 of the present article shall not apply if the person has had an opportunity to leave the requesting State and has not done so within [30/45] days of final discharge in respect of the offence for which that person was extradited or if the person has voluntarily returned to the territory of the requesting State after leaving it.

Article 15

TRANSIT

1. Where a person is to be extradited to a Party from a third State through the territory of the other Party, the party to which the person is to be extradited shall request the other Party to permit the transit of that person through its territory. This does not apply where air transport is used and no landing in the territory of the other Party is scheduled.

2. Upon receipt of such a request, which shall contain relevant information, the requested State shall deal with this request pursuant to procedures provided by its own law. The requested State shall grant the request expeditiously unless its essential interests would be prejudiced thereby.²⁴³

3. The State of transit shall ensure that legal provisions exist that would enable detaining the person in custody during transit.

4. In the event of an unscheduled landing, the Party to be requested to permit transit may, at the request of the escorting officer, hold the person in custody for [48] hours, pending receipt of the transit request to be made in accordance with paragraph 1 of the present article.

Article 16

CONCURRENT REQUESTS

If a Party receives requests for extradition for the same person from both the other Party and a third State it shall, at its discretion, determine to which of those States the person is to be extradited.

Article 17

COSTS

1. The requested State shall meet the cost of any proceedings in its jurisdiction arising out of a request for extradition.

2. The requested State shall also bear the costs incurred in its territory in connection with the seizure and handing over of property, or the arrest and detention of the person whose extradition is sought.²⁴⁴

3. The requesting State shall bear the costs incurred in conveying the person from the territory of the requested State, including transit costs.

Article 18

FINAL PROVISIONS

1. The present Treaty is subject to [ratification, acceptance or approval]. The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.

3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which such notice is received by the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

DONE at _____ on _____ in the _____ and _____ languages, [both/all] texts being equally authentic.

(10) *Model Treaty on Mutual Assistance in Criminal Matters*

By its resolution 45/117 of 14 December 1990,²⁴⁵ adopted on the recommendation of the Third Committee,²⁴⁶ the General Assembly, recognizing the importance of a model treaty on mutual assistance in criminal matters as an effective way of dealing with the complex aspects and serious consequences of crime, especially in its new forms and dimensions, adopted the Model Treaty on Mutual Assistance in Criminal Matters together with the Optional Protocol thereto, contained in the annex to the resolution, as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral agreements aimed at improving cooperation in matters of crime prevention and criminal justice and invited Member States, if they had not yet established treaty relations with other States in the matter of mutual assistance in criminal matters, or if they wished to revise existing treaty relations, to take into account, whenever doing so, the Model Treaty.

ANNEX

Model Treaty on Mutual Assistance in Criminal Matters

The _____ and the _____

Desirous of extending to each other the widest measure of co-operation to combat crime, Have agreed as follows:

Article 1

SCOPE OF APPLICATION²⁴⁷

1. The Parties shall, in accordance with the present Treaty, afford to each other the widest possible measure of mutual assistance in investigations or court proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting State.

2. Mutual assistance to be afforded in accordance with the present Treaty may include:

- (a) Taking evidence or statements from persons;
- (b) Assisting in the availability of detained persons or others to give evidence or assist in investigation;
- (c) Effecting service of judicial documents;
- (d) Executing searches and seizures;
- (e) Examining objects and sites;
- (f) Providing information and evidentiary items;
- (g) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records.

3. The present Treaty does not apply to:

- (a) The arrest or detention of any person with a view to the extradition of that person;
- (b) The enforcement in the requested State of criminal judgements imposed in the requesting State except to the extent permitted by the law of the requested State and the Optional Protocol to the present Treaty;
- (c) The transfer of persons in custody to serve sentences;
- (d) The transfer of proceedings in criminal matters.

Article 2²⁴⁸

OTHER ARRANGEMENTS

Unless the Parties decide otherwise, the present Treaty shall not affect obligations subsisting between them whether pursuant to other treaties or arrangements or otherwise.

Article 3

DESIGNATION OF COMPETENT AUTHORITIES

Each Party shall designate and indicate to the other Party an authority or authorities by or through which requests for the purpose of the present Treaty should be made or received.

Article 4²⁴⁹

REFUSAL OF ASSISTANCE

1. Assistance may be refused if:²⁵⁰

(a) The requested State is of the opinion that the request, if granted, would prejudice its sovereignty, security, public order (*ordre public*) or other essential public interests;

(b) The offence is regarded by the requested State as being of a political nature;

(c) There are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting a person on account of that person's race, sex, religion, nationality, ethnic origin or political opinions or that that person's position may be prejudiced for any of those reasons;

(d) The request relates to an offence that is subject to investigation or prosecution in the requested State or the prosecution of which in the requesting State would be incompatible with the requested State's law on double jeopardy (*ne bis in idem*);

(e) The assistance requested requires the requested State to carry out compulsory measures that would be inconsistent with its law and practice had the offence been the subject of investigation or prosecution under its own jurisdiction;

(f) The act is an offence under military law, which is not also an offence under ordinary criminal law.

2. Assistance shall not be refused solely on the ground of secrecy of banks and similar financial institutions.

3. The requested State may postpone the execution of the request if its immediate execution would interfere with an ongoing investigation or prosecution in the requested State.

4. Before refusing a request or postponing its execution, the requested State shall consider whether assistance may be granted subject to certain conditions. If the requesting State accepts assistance subject to these conditions, it shall comply with them.

5. Reasons shall be given for any refusal or postponement of mutual assistance.

Article 5

CONTENTS OF REQUESTS

1. Requests for assistance shall include:²⁵¹

(a) The name of the requesting office and the competent authority conducting the investigation or court proceedings to which the request relates;

(b) The purpose of the request and a brief description of the assistance sought;

(c) A description of the facts alleged to constitute the offence and a statement or text of the relevant laws, except in cases of a request for service of documents;

(d) The name and address of the person to be served, where necessary;

(e) The reasons for and details of any particular procedure or requirement that the requesting State wishes to be followed, including a statement as to whether sworn or affirmed evidence or statements are required;

(f) Specification of any time-limit within which compliance with the request is desired;

(g) Such other information as is necessary for the proper execution of the request.

2. Requests, supporting documents and other communications made pursuant to the present Treaty shall be accompanied by a translation into the language of the requested State or another language acceptable to that State.

3. If the requested State considers that the information contained in the request is not sufficient to enable the request to be dealt with, it may request additional information.

Article 6

EXECUTION OF REQUESTS²⁵²

Subject to article 19 of the present Treaty, requests for assistance shall be carried out promptly, in the manner provided for by the law and practice of the requested State. To the extent consistent with its law and practice, the requested State shall carry out the request in the manner specified by the requesting State.

Article 7

RETURN OF MATERIAL TO THE REQUESTED STATE

Any property, as well as original records or documents, handed over to the requesting State under the present Treaty shall be returned to the requested State as soon as possible unless the latter waives its right of return thereof.

*Article 8*²⁵³

LIMITATION ON USE

The requesting State shall not, without the consent of the requested State, use or transfer information or evidence provided by the requested State for investigations or proceedings other than those stated in the request. However, in cases where the charge is altered, the material provided may be used in so far as the offence, as charged, is an offence in respect of which mutual assistance could be provided under the present Treaty.

Article 9

PROTECTION OF CONFIDENTIALITY²⁵⁴

Upon request:

(a) The requested State shall use its best endeavours to keep confidential the request for assistance, its contents and its supporting documents as well as the fact of granting of such assistance. If the request cannot be executed without breaching confidentiality, the requested State shall so inform the requesting State, which shall then determine whether the request should nevertheless be executed;

(b) The requesting State shall keep confidential evidence and information provided by the requested State, except to the extent that the evidence and information is needed for the investigation and proceedings described in the request.

Article 10

SERVICE OF DOCUMENTS²⁵⁵

1. The requested State shall effect service of documents that are transmitted to it for this purpose by the requesting State.

2. A request to effect service of summonses shall be made to a requested State not less than [. . .]²⁵⁶ days before the date on which the appearance of a person is required. In urgent cases, the requested State may waive the time requirement.

*Article 11*²⁵⁷

OBTAINING OF EVIDENCE

1. The requested State shall, in conformity with its law and upon request, take the sworn or affirmed testimony, or otherwise obtain statements of persons or require them to produce items of evidence for transmission to the requesting State.

2. Upon the request of the requesting State, the parties to the relevant proceedings in the requesting State, their legal representatives and representatives of the requesting State may, subject to the laws and procedures of the requested State, be present at the proceedings.

Article 12

RIGHT OR OBLIGATION TO DECLINE TO GIVE EVIDENCE

1. A person who is required to give evidence in the requested or requesting State may decline to give evidence where either:

(a) The law of the requested State permits or requires that person to decline to give evidence in similar circumstances in proceedings originating in the requested State; or

(b) The law of the requesting State permits or requires that person to decline to give evidence in similar circumstances in proceedings originating in the requesting State.

2. If a person claims that there is a right or obligation to decline to give evidence under the law of the other State, the State where that person is present shall, with respect therein, rely on a certificate of the competent authority of the other State as evidence of the existence or non-existence of that right or obligation.

Article 13

AVAILABILITY OF PERSONS IN CUSTODY TO GIVE EVIDENCE OR TO ASSIST IN INVESTIGATIONS²⁵⁸

1. Upon the request of the requesting State, and if the requested State agrees and its law so permits, a person in custody in the latter State may, subject to his or her consent, be temporarily transferred to the requesting State to give evidence or to assist in the investigations.

2. While the person transferred is required to be held in custody under the law of the requested State, the requesting State shall hold that person in custody and shall return that person in custody to the requested State at the conclusion of the matter in relation to which transfer was sought or at such earlier time as the person's presence is no longer required.

3. Where the requested State advises the requesting State that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person referred to in article 14 of the present Treaty.

Article 14

AVAILABILITY OF OTHER PERSONS TO GIVE EVIDENCE OR ASSIST IN INVESTIGATIONS²⁵⁹

1. The requesting State may request the assistance of the requested State in inviting a person:

(a) To appear in proceedings in relation to a criminal matter in the requesting State unless that person is the person charged; or

(b) To assist in the investigations in relation to a criminal matter in the requesting State.

2. The requested State shall invite the person to appear as a witness or expert in proceedings or to assist in the investigations. Where appropriate, the requested State shall satisfy itself that satisfactory arrangements have been made for the person's safety.

3. The request or the summons shall indicate the approximate allowances and the travel and subsistence expenses payable by the requesting State.

4. Upon request, the requested State may grant the person an advance, which shall be refunded by the requesting State.

Article 15²⁶⁰

SAFE CONDUCT

1. Subject to paragraph 2 of the present article, where a person is in the requesting State pursuant to a request made under article 13 or 14 of the present Treaty:

(a) That person shall not be detained, prosecuted, punished or subjected to any other restrictions of personal liberty in the requesting State in respect of any acts or omissions or convictions that preceded the person's departure from the requested State;

(b) That person shall not, without that person's consent, be required to give evidence in any proceeding or to assist in any investigation other than the proceeding or investigation to which the request relates.

2. Paragraph 1 of the present article shall cease to apply if that person, being free to leave, has not left the requesting State within a period of [15] consecutive days, or any longer period otherwise agreed on by the Parties, after that person has been officially told or notified that his or her presence is no longer required or, having left, has voluntarily returned.

3. A person who does not consent to a request pursuant to article 13 or accept an invitation pursuant to article 14 shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure, notwithstanding any contrary statement in the request or summons.

Article 16

PROVISION OF PUBLICLY AVAILABLE DOCUMENTS AND OTHER RECORDS²⁶¹

1. The requested State shall provide copies of documents and records in so far as they are open to public access as part of a public register or otherwise, or in so far as they are available for purchase or inspection by the public.

2. The requested State may provide copies of any other document or record under the same conditions as such document or record may be provided to its own law enforcement and judicial authorities.

Article 17

SEARCH AND SEIZURE²⁶²

The requested State shall, in so far as its law permits, carry out requests for search and seizure and delivery of any material to the requesting State for evidentiary purposes, provided that the rights of *bona fide* third parties are protected.

Article 18

CERTIFICATION AND AUTHENTICATION²⁶³

A request for assistance and the documents in support thereof, as well as documents or other material supplied in response to such a request, shall not require certification or authentication.

Article 19

COSTS²⁶⁴

The ordinary costs of executing a request shall be borne by the requested State, unless otherwise determined by the Parties. If expenses of a substantial or extraordinary nature are or will be required to execute the request, the Parties shall consult in advance to determine the terms and conditions under which the request shall be executed as well as the manner in which the costs shall be borne.

Article 20

CONSULTATION

The Parties shall consult promptly, at the request of either, concerning the interpretation, the application or the carrying out of the present Treaty either generally or in relation to a particular case.

Article 21

FINAL PROVISIONS

1. The present Treaty is subject to [ratification, acceptance or approval]. The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.

3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

DONE at _____ on _____ in the _____ and _____ languages, [both/all] texts being equally authentic.

Optional Protocol to the Model Treaty on Mutual Assistance in Criminal Matters concerning the proceeds of crime²⁶⁵

1. In the present Protocol "proceeds of crime" means any property suspected, or found by a court, to be property directly or indirectly derived or realized as a result of the commission of an offence or to represent the value of property and other benefits derived from the commission of an offence.

2. The requested State shall, upon request, endeavour to ascertain whether any proceeds of the alleged crime are located within its jurisdiction and shall notify the requesting State of the results of its inquiries. In making the request, the requesting State shall notify the requested State of the basis of its belief that such proceeds may be located within its jurisdiction.

3. In pursuance of a request made under paragraph 2 of the present Protocol, the requested State shall endeavour to trace assets, investigate financial dealings, and obtain other information or evidence that may help to secure the recovery of proceeds of crime.

4. Where, pursuant to paragraph 2 of the present Protocol, suspected proceeds of crime are found, the requested State shall upon request take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds of crime, pending a final determination in respect of those proceeds by a court of the requesting State.

5. The requested State shall, to the extent permitted by its law, give effect to or permit enforcement of a final order forfeiting or confiscating the proceeds of crime made by a court of the requesting State or take other appropriate action to secure the proceeds following a request by the requesting State.²⁶⁶

6. The Parties shall ensure that the rights of *bona fide* third parties shall be respected in the application of the present Protocol.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Protocol.

DONE at _____ on _____ in the _____ and _____ languages, [both/all] texts being equally authentic.

(11) *Model Treaty on the Transfer of Proceedings in Criminal Matters*

By its resolution 45/118 of 14 December 1990,²⁶⁷ adopted on the recommendation of the Third Committee,²⁶⁸ the General Assembly, recognizing the importance of

a model treaty on the transfer of proceedings in criminal matters as an effective way of dealing with the complex aspects, consequences and modern evolution of transnational crime, adopted the Model Treaty on the Transfer of Proceedings in Criminal Matters, contained in the annex to the resolution, as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral or multilateral treaties aimed at improving cooperation in matters of crime prevention and criminal justice and invited Member States, if they had not yet established treaty relations with other States in regard to transfer of proceedings in criminal matters, or if they wished to revise existing treaty relations, to take the Model Treaty into account whenever doing so.

ANNEX

Model Treaty on the Transfer of Proceedings in Criminal Matters

The _____ and the _____

Desirous of further strengthening international co-operation and mutual assistance in criminal justice, on the basis of the principles of respect for national sovereignty and jurisdiction and of non-interference in the internal affairs of States,

Believing that such co-operation should further the ends of justice, the social resettlement of offenders and the interests of the victims of crime,

Bearing in mind that the transfer of proceedings in criminal matters contributes to effective administration of justice and to reducing conflicts of competence,

Aware that the transfer of proceedings in criminal matters can help to avoid pre-trial detention and thus reduce the prison population,

Convinced, therefore, that the transfer of proceedings in criminal matters should be promoted,

Have agreed as follows:

Article 1

SCOPE OF APPLICATION

1. When a person is suspected of having committed an offence under the law of a State which is a Contracting Party, that State may, if the interests of the proper administration of justice so require, request another State which is a Contracting Party to take proceedings in respect of this offence.

2. For the purpose of applying the present Treaty, the Contracting Parties shall take the necessary legislative measures to ensure that a request of the requesting State to take proceedings shall allow the requested State to exercise the necessary jurisdiction.

Article 2

CHANNELS OF COMMUNICATIONS

A request to take proceedings shall be made in writing. The request, supporting documents and subsequent communications shall be transmitted through diplomatic channels, directly between the Ministries of Justice or any other authorities designated by the Parties.

Article 3

REQUIRED DOCUMENTS

1. The request to take proceedings shall contain or be accompanied by the following information:

(a) The authority presenting the request;

(b) A description of the act for which transfer of proceedings is being requested, including the specific time and place of the offence;

(c) A statement on the results of investigations which substantiate the suspicion of an offence;

(d) The legal provisions of the requesting State on the basis of which the act is considered to be an offence;

(e) A reasonably exact statement on the identity, nationality and residence of the suspected person.

2. The documents submitted in support of a request to take proceedings shall be accompanied by a translation into the language of the requested State or into another language acceptable to that State.

Article 4

CERTIFICATION AND AUTHENTICATION

Subject to national law and unless the Parties decide otherwise, a request to take proceedings and the documents in support thereof, as well as the documents and other material supplied in response to such a request, shall not require certifications or authentication.²⁶⁹

Article 5

DECISION ON THE REQUEST

The competent authorities of the requested State shall examine what action to take on the request to take proceedings in order to comply, as fully as possible, with the request under their own law, and shall promptly communicate their decision to the requesting State.

Article 6

DUAL CRIMINALITY

A request to take proceedings can be complied with only if the act on which the request is based would be an offence if committed in the territory of the requested State.

Article 7

GROUNDS FOR REFUSAL

If the requested State refuses acceptance of a request for transfer of proceedings, it shall communicate the reasons for refusal to the requesting State. Acceptance may be refused if:²⁷⁰

(a) The suspected person is not a national of or ordinary resident in the requested State;

(b) The act is an offence under military law, which is not also an offence under ordinary criminal law;

(c) The offence is in connection with taxes, duties, customs or exchange;

(d) The offence is regarded by the requested State as being of a political nature.

Article 8

THE POSITION OF THE SUSPECTED PERSON

1. The suspected person may express to either State his or her interest in the transfer of the proceedings. Similarly, such interest may be expressed by the legal representative or close relatives of the suspected person.

2. Before a request for transfer of proceedings is made, the requesting State shall, if practicable, allow the suspected person to present his or her views on the alleged offence and the intended transfer, unless that person has absconded or otherwise obstructed the course of justice.

Article 9

THE RIGHTS OF THE VICTIM

The requesting and requested States shall ensure in the transfer of proceedings that the rights of the victim of the offence, in particular his or her right to restitution or compensation, shall not be affected as a result of the transfer. If a settlement of the claim of the victim has not been reached before the transfer, the requested State shall permit the representation of the claim in the transferred proceedings, if its law provides for such a possibility. In the event of the death of the victim, these provisions shall apply to his or her dependants accordingly.

Article 10

EFFECTS OF THE TRANSFER OF PROCEEDINGS ON THE REQUESTING STATE (*ne bis in idem*)

Upon acceptance by the requested State of the request to take proceedings against the suspected person, the requesting State shall provisionally discontinue prosecution, except necessary investigation, including judicial assistance to the requested State, until the requested State informs the requesting State that the case has been finally disposed of. From that date on, the requesting State shall definitely refrain from further prosecution of the same offence.

Article 11

EFFECTS OF THE TRANSFER OF PROCEEDINGS ON THE REQUESTED STATE

1. The proceedings transferred upon agreement shall be governed by the law of the requested State. When charging the suspected person under its law, the requested State shall make the necessary adjustment with respect to particular elements in the legal description of the offence. Where the competence of the requested State is based on the provision set forth in paragraph 2 of article 1 of the present Treaty, the sanction pronounced in that State shall not be more severe than that provided by the law of the requesting State.

2. As far as compatible with the law of the requested State, any act with a view to proceedings or procedural requirements performed in the requesting State in accordance with its law shall have the same validity in the requested State as if the act had been performed in or by the authorities of that State.

3. The requested State shall inform the requesting State of the decision taken as a result of the proceedings. To this end a copy of any final decision shall be transmitted to the requesting State upon request.

Article 12

PROVISIONAL MEASURES

When the requesting State announces its intention to transmit a request for transfer of proceedings, the requested State may, upon a specific request made for this purpose by the requesting State, apply all such provisional measures, including provisional detention and seizure, as could be applied under its own law if the offence in respect of which transfer of proceedings is requested had been committed in its territory.

Article 13

THE PLURALITY OF CRIMINAL PROCEEDINGS

When criminal proceedings are pending in two or more States against the same suspected person in respect of the same offence, the States concerned shall conduct consultations to decide which of them alone should continue the proceedings. An agreement reached thereupon shall have the consequences of a request for transfer of proceedings.

Article 14

COSTS

Any costs incurred by a Contracting Party because of a transfer of proceedings shall not be refunded, unless otherwise agreed by both the requesting and requested States.

Article 15

FINAL PROVISIONS

1. The present Treaty is subject to [ratification, acceptance or approval]. The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.

3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

DONE at _____ on _____ in the _____ and _____ languages, [both/all] texts being equally authentic.

(12) *Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released*

By its resolution 45/119 of 14 December 1990,²⁷¹ adopted on the recommendation of the Third Committee,²⁷² the General Assembly, convinced that the establishment of bilateral and multilateral arrangements for transfer of supervision of offenders conditionally sentenced or conditionally released would greatly contribute to the development of more effective international cooperation in penal matters, adopted the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released, contained in the annex to the resolution, as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral or multilateral treaties aimed at improving cooperation in matters of crime prevention and criminal justice and invited Member States, if they had not established treaty relations with other States in the area of the transfer of supervision of offenders conditionally released, or if they wished to revise existing treaty relations, to take into account the Model Treaty whenever doing so.

ANNEX

Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released

The _____ and the _____

Desirous of further strengthening international co-operation and mutual assistance in criminal justice, on the basis of the principles of respect for national sovereignty and jurisdiction and of non-interference in the internal affairs of States.

Believing that such co-operation should further the ends of justice, the social resettlement of sentenced persons and the interests of the victims of crime,

Bearing in mind that the transfer of supervision of offenders conditionally sentenced or conditionally released can contribute to an increase in the use of alternatives to imprisonment,

Aware that supervision in the home country of the offender rather than enforcement of the sentence in a country where the offender has no roots also contributes to an earlier and more effective reintegration into society,

Convinced, therefore, that the social rehabilitation of offenders and the increased application of alternatives to imprisonment would be promoted by facilitating the supervision of conditionally sentenced or conditionally released offenders in their State of ordinary residence,

Have agreed as follows:

Article 1

SCOPE OF APPLICATION

1. The present Treaty shall be applicable, if, according to a final court decision, a person has been found guilty of an offence and has been:

- (a) Placed on probation without sentence having been pronounced;
- (b) Given a suspended sentence involving deprivation of liberty;
- (c) Given a sentence, the enforcement of which has been modified (parole) or conditionally suspended, in whole or in part, either at the time of the sentence or subsequently.

2. The State where the decision was taken (sentencing State) may request another State (administering State) to take responsibility for applying the terms of the decision (transfer of supervision).

Article 2

CHANNELS OF COMMUNICATIONS

A request for the transfer of supervision shall be made in writing. The request, supporting documents and subsequent communication shall be transmitted through diplomatic channels, directly between the Ministries of Justice or any other authorities designated by the Parties.

Article 3

REQUIRED DOCUMENTS

1. A request for the transfer of supervision shall contain all necessary information on the identity, nationality and residence of the sentenced person. The request shall be accompanied by the original or a copy of any court decision referred to in article 1 of the present Treaty and a certificate that this decision is final.

2. The documents submitted in support of a request for transfer of supervision shall be accompanied by a translation into the language of the requested State or into another language acceptable to that State.

Article 4

CERTIFICATION AND AUTHENTICATION

Subject to national law and unless the Parties decide otherwise, a request for transfer of supervision and the documents in support thereof, as well as the documents and other material supplied in response to such a request, shall not require certification or authentication²⁷³

Article 5

DECISION ON THE REQUEST

The competent authorities of the administering State shall examine what action to take on the request for supervision in order to comply, as fully as possible, with the request under their own law, and shall promptly communicate their decision to the sentencing State.

Article 6

DUAL CRIMINALITY²⁷⁴

A request for transfer of supervision can be complied with only if the act on which the request is based would constitute an offence if committed in the territory of the administering State.

Article 7

GROUND FOR REFUSAL²⁷⁵

If the administering State refuses acceptance of a request for transfer of supervision, it shall communicate the reasons for refusal to the sentencing State. Acceptance may be refused where:

- (a) The sentenced person is not an ordinary resident in the administering State;
- (b) The act is an offence under military law, which is not also an offence under ordinary criminal law;
- (c) The offence is in connection with taxes, duties, customs or exchange;
- (d) The offence is regarded by the administering State as being of a political nature;
- (e) The administering State, under its own law, can no longer carry out the supervision or enforce the sanction in the event of revocation because of lapse of time.

Article 8

THE POSITION OF THE SENTENCED PERSON

Whether sentenced or standing trial, a person may express to the sentencing State his or her interest in a transfer of supervision and his or her willingness to fulfil any conditions to be imposed. Similarly, such interest may be expressed by his or her legal representative or close relatives. Where appropriate, the Contracting States shall inform the offender or his or her close relatives of the possibilities under the present Treaty.

Article 9

THE RIGHTS OF THE VICTIM

The sentencing State and the administering State shall ensure in the transfer of supervision that the rights of the victims of the offence, in particular his or her rights to restitution or compensation, shall not be affected as a result of the transfer. In the event of the death of the victim, this provision shall apply to his or her dependants accordingly.

Article 10

THE EFFECTS OF THE TRANSFER OF SUPERVISION ON THE SENTENCING STATE

The acceptance by the administering State of the responsibility for applying the terms of the decision rendered in the sentencing State shall extinguish the competence of the latter State to enforce the sentence.

Article 11

THE EFFECTS OF THE TRANSFER OF SUPERVISION ON THE ADMINISTERING STATE

1. The supervision transferred upon agreement and the subsequent procedure shall be carried out in accordance with the law of the administering State. That State alone shall have the right of revocation. That State may, to the extent necessary, adapt to its own law the conditions or measures prescribed, provided that such conditions or measures are, in terms of their nature or duration, not more severe than those pronounced in the sentencing State.

2. If the administering State revokes the conditional sentence or conditional release, it shall enforce the sentence in accordance with its own law without, however, going beyond the limits imposed by the sentencing State.

Article 12

REVIEW, PARDON AND AMNESTY

1. The sentencing State alone shall have the right to decide on any application to reopen the case.
2. Each Party may grant pardon, amnesty or commutation of the sentence in accordance with the provisions of its Constitution or other laws.

Article 13

INFORMATION

1. The Contracting Parties shall keep each other informed, in so far as it is necessary, of all circumstances likely to affect measures of supervision or enforcement in the administering State. To this end they shall transmit to each other copies of any relevant decisions in this respect.
2. After expiration of the period of supervision, the administering State shall provide to the sentencing State, at its request, a final report concerning the supervised person's conduct and compliance with the measures imposed.

Article 14

COSTS

Supervision and enforcement costs incurred in the administering State shall not be refunded, unless otherwise agreed by both the sentencing State and the administering State.

Article 15

FINAL PROVISIONS

1. The present Treaty is subject to [ratification, acceptance or approval]. The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.
2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.
3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.
4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

DONE at _____ on _____ in the _____ and _____ languages, [both/all] texts being equally authentic.

4. LAW OF THE SEA

*Status of the United Nations Convention on the Law of the Sea*²⁷⁶

As of 31 December 1990, 159 States had signed and 45 States 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*²⁷⁷

The Preparatory Commission met twice during 1990; it held its eighth session at Kingston from 5 to 30 March 1990, and a summer meeting in New York from 13 to 31 August 1990.

At the eighth session the Preparatory Commission extensively discussed the modalities for the implementation of the obligations of the registered pioneer investors and their certifying States. The matter was finally resolved during the summer meeting when, on 30 August 1990, the General Committee, on behalf of the Preparatory Commission, adopted the Understanding on the Fulfilment of Obligations by the Registered Pioneer Investors and their Certifying States.²⁷⁸ On the adoption of the Understanding, the Chairman made the following statement:²⁷⁹

“(a) Should any agreement be made which would affect in any way this Understanding, such adjustments as may be necessary shall be made to it;

“(b) The required date for the submission of a plan of work by each registered pioneer investor under resolution II, paragraph 8 (a), shall be reviewed in the light of the assessment of the Group of Technical Experts in accordance with paragraph 12 of the Understanding.”

The main elements of the Understanding related to (a) the payment of a fixed fee of \$US 1 million commencing from the date of allocation of a pioneer area; (b) the carrying out of exploration in the area reserved for activities by the Authority; and (c) the training of personnel designated by the Authority.

At the eighth session and the summer meeting the Commission also completed the second reading of both the draft Agreement between the International Seabed Authority and the Government of Jamaica regarding the Headquarters of the International Seabed Authority²⁸⁰ and the draft Protocol on the Privileges and Immunities of the International Seabed Authority.²⁸¹ On the issue of subsidiary organs, it was agreed that the Preparatory Commission should not make any recommendations to the Authority with regard to the establishment of such organs, the only exception being the Finance Committee.

The four Special Commissions of the Preparatory Commission had been considering the substantive work allocated to them. Special Commission 1, which was charged with the problems that would be encountered by developing land-based producer States from deep seabed mineral production, considered, at its summer meeting, a revised list of the provisional conclusions on the above-mentioned problems which had been prepared incorporating the comments and suggestions of delegations in the course of the first reading. The Commission gave preliminary consideration to the provisional conclusions, except those which were directly related to the issues under consideration in the Ad Hoc Working Group. The Ad Hoc Working Group was continuing its consideration of certain “hard-core issues”, such as the system of compensation, compensation fund, effects of subsidized seabed mining and dependency thresholds and trigger thresholds. Special Commission 2, which was dealing with preparations for the establishment of the Enterprise — the operational arm of the Authority — had completed its work on the subject of training when the Preparatory Commission adopted, at the eighth session, a series of recommendations aimed at implementing the Preparatory Commission Training Programme.²⁸² Special Commission 3, which was preparing the rules, regulations and procedures for the exploration and exploitation of the deep seabed, concluded, during the eighth session, the first

reading of the draft regulations on production authorization²⁸³ and began its consideration of the draft regulations on the protection and preservation of the marine environment from activities in the Area²⁸⁴ which had been prepared by the Secretariat. Special Commission 4, which was mandated to prepare recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea, continued its consideration of the administrative arrangements, structure and financial implications of the Tribunal and the draft relationship arrangements between the United Nations and the International Tribunal for the Law of the Sea prepared by the Secretariat. The Special Commission also examined the draft agreement on cooperation and relationships between the Tribunal and the United Nations.²⁸⁵

The Secretary-General's report also provided in its part two 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 45/145 of 13 December 1990,²⁸⁶ 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; invited all States to make renewed efforts to facilitate universal participation in the Convention; 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; also called upon all States to safeguard the unified character of the Convention and related resolutions adopted therewith and to apply them in a manner consistent with that character and with their 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; noted with satisfaction the Understanding on the Fulfillment of Obligations by the Registered Pioneer Investors and their Certifying States adopted by the Preparatory Commission on 30 August 1990;²⁷⁸ welcomed the report of the Secretary-General on the realization of benefits under the United Nations Convention on the Law of the Sea, in which were identified the needs of States in regard to the development and management of ocean resources;²⁸⁷ and expressed its appreciation to the Secretary-General for the study on marine scientific research, in the light of the same Convention.²⁸⁸

5. INTERNATIONAL COURT OF JUSTICE^{289, 290}

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*)²⁹¹

At a meeting on 22 June 1990 called by the President of the Court to ascertain the views of Nicaragua and the United States of America on the date for opening of the oral proceedings on compensation in this case, the Agent of Nicaragua informed

the President of the position of his Government, already set out in a letter from the Agent to the Registrar of the Court dated 20 June 1990. He indicated that the new Government of Nicaragua was carefully studying the different matters it had pending before the Court; that the instant case was very complex and that, added to the many difficult tasks facing the Government, these were special circumstances that would make it extremely inconvenient for it to take a decision on what procedure to follow in this case during the coming months. The President, in the light of the position of the Government of Nicaragua, stated that he would inform the Court of that position and would in the meantime take no action to fix a date for hearings.

(ii) *Border and Transborder Armed Actions*
(*Nicaragua v. Honduras*)

By an Order of 14 December 1989,²⁹² the Court decided that the time-limit for the filing by Honduras of a Counter-Memorial on the merits was extended from 19 February 1990 to a date to be fixed by an order to be made after 11 June 1990.

Subsequent to the date last mentioned, the President of the Court consulted the Parties, was informed that they did not desire the new time-limit for the Counter-Memorial to be fixed for the time being, and informed them that he would so advise the Court.

(iii) *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)*

By an Order of 14 October 1988,²⁹³ the Court, taking into account the views expressed by the Parties, fixed 1 August 1989 as the time-limit for the Memorial of Denmark and 15 May 1990 for the Counter-Memorial of Norway. Both the Memorial and Counter-Memorial were filed within the prescribed time-limits.

Taking into account an agreement between the Parties that there should be a Reply and a Rejoinder, the President of the Court, by an Order of 21 June 1990,²⁹⁴ fixed 1 February 1991 as the time-limit for the Reply of Denmark and 1 October 1991 as that for the Rejoinder of Norway.

(iv) *Aerial Incident of 3 July 1988*
(*Islamic Republic of Iran v. United States of America*)

By an Order of 13 December 1989;²⁹⁵ the Court, taking into account the views expressed by each of the Parties, fixed 12 June 1990 as the time-limit for the filing of the Memorial of the Islamic Republic of Iran and 10 December 1990 for the filing of the Counter-Memorial of the United States of America. Judge Oda appended a declaration to the Order of the Court;²⁹⁶ Judges Schwebel and Shahabuddeen appended separate opinions.²⁹⁷

By an Order of 12 June 1990,²⁹⁸ made in response to a request by the Islamic Republic of Iran and after the views of the United States of America had been ascertained, the President of the Court extended to 24 July 1990 the time-limit for the filing of the Memorial of the Islamic Republic of Iran and to 4 March 1991 the time-limit for the Counter-Memorial of the United States of America. The Memorial was filed within the prescribed time-limit.

(v) *Certain Phosphate Lands in Nauru*
(*Nauru v. Australia*)

By an Order of 18 July 1989,²⁹⁹ the Court, having ascertained the views of the Parties, fixed 20 April 1990 as the time-limit for the Memorial of Nauru and 21 January 1991 for the Counter-Memorial of Australia. The Memorial was filed within the prescribed time-limit.

(vi) *Arbitral Award of 31 July 1989*
(*Guinea-Bissau v. Senegal*)

On 18 January 1990 a request was filed in the Registry whereby Guinea-Bissau, on the ground of actions stated to have been taken by the Senegalese Navy in a maritime area which Guinea-Bissau regarded as an area disputed between the Parties, requested the Court to indicate the following provisional measures:

“In order to safeguard the rights of each of the Parties, they shall abstain in the disputed area from any act or action of any kind whatever, during the whole duration of the proceedings until the decision is given by the Court.”

Having held public sittings on 12 February 1990 to hear the oral observations of both Parties on the request for provisional measures, the Court, in an Order of 2 March 1990³⁰⁰ dismissed that request. A summary of this Order and the complete text of the operative paragraph are given below.

The Court began by recalling the history of the case and observed that Guinea-Bissau explained in its request for the indication of provisional measures that that request was prompted by

“acts of sovereignty by Senegal which prejudice both the judgment on the merits to be given by the Court and the maritime delimitation to be effected subsequently between the States”.

It then summarized the incidents which took place and which involved actions by both Parties with regard to foreign fishing vessels.

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On the question of its jurisdiction the Court subsequently considered that, whereas on a request for provisional measures it need not, before deciding whether or not to indicate them, finally satisfy itself that it has jurisdiction on the merits of the case, yet it ought not to indicate such measures unless the provisions invoked by the Applicant appear, *prima facie*, to afford a basis on which the jurisdiction of the Court might be founded; and found that the two declarations made by the Parties under Article 36, paragraph 2, of the Statute and invoked by the Applicant did appear, *prima facie*, to afford a basis of jurisdiction.

It observed that that decision in no way prejudged the question of the jurisdiction of the Court to deal with the merits of the case.

*

Guinea-Bissau had requested the Court to exercise in the proceedings the power conferred upon it by Article 41 of the Statute of the Court “to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party”.

The Court observed that the purpose of exercising that power was to protect “rights which are the subject of dispute in judicial proceedings”,³⁰¹ that such measures were provisional and indicated “pending the final decision”,³⁰² and that therefore they were to be measures such that they would no longer be required as such once the dispute over those rights had been resolved by the Court’s judgment on the merits of the case.

It further noted that Guinea-Bissau recognized in its Application that the dispute of which it had seized the Court was not the dispute over maritime delimitation brought before the Arbitration Tribunal, but a “new dispute . . . relating to the applicability of the text issued by way of award of 31 July 1989”; that however it had been argued by Guinea-Bissau that provisional measures might be requested, in the context of judicial proceedings on a subsidiary dispute, to protect rights in issue in the underlying dispute; that the only link essential for the admissibility of measures was the link between the measures contemplated and the conflict of interests underlying the question or questions put to the Court — that conflict of interests being the conflict over maritime delimitation — and that this was so whether the Court was seized of a main dispute or of a subsidiary dispute, a fundamental dispute or a secondary dispute, on the sole condition that the decision by the Court on the questions of substance which were submitted to it be a necessary prerequisite for the settlement of the conflict of interests to which the measures related; that Guinea-Bissau claimed that the basic dispute concerned the conflicting claims of the Parties to control, exploration and exploitation of maritime areas, and that the purpose of the measures requested was to preserve the integrity of the maritime area concerned, and that the required relationship between the provisional measures requested by Guinea-Bissau and the case before the Court was present.

The Court observed that the Application instituting proceedings asked the Court to declare the 1989 award to be “inexistent” or, subsidiarily, “null and void”, and to declare “that the Government of Senegal is thus not justified in seeking to require the Government of Guinea-Bissau to apply the so-called award of 31 July 1989”; that the Application thus asked the Court to pass upon the existence and validity of the award but did not ask the Court to pass upon the respective rights of the Parties in the maritime areas in question; it found that accordingly the alleged rights sought to be made the subject of provisional measures were not the subject of the proceedings before the Court on the merits of the case; and that any such measures could not be subsumed by the Court’s judgment on the merits.

Moreover, a decision of the Court that the award was inexistent or null and void would in no way entail any decision that the Applicant’s claims in respect of the disputed maritime delimitation were well founded, in whole or in part; the dispute over those claims would therefore not be resolved by the Court’s judgment.

The operative paragraph of the Order is as follows:

“Accordingly,

THE COURT,

by fourteen votes to one,

Dismisses the request of the Republic of Guinea-Bissau, filed in the Registry on 18 January 1990, for the indication of provisional measures.

IN FAVOUR: *President* Ruda; *Vice-President* Mbaye; *Judges* Lachs, Elias, Oda, Ago, Schwebel, Sir Robert Jennings, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen, Pathak;

AGAINST: *Judge ad hoc Thierry.*"

Judges Evensen and Shahabuddeen appended separate opinions to the Order.³⁰³ Judge ad hoc Thierry appended a dissenting opinion.³⁰⁴

(vii) *Territorial Dispute*
(*Libyan Arab Jamahiriya/Chad*)³⁰⁵

At a meeting between the President of the Court and representatives of the Libyan Arab Jamahiriya and Chad held on 24 October 1990, it was agreed between the Agents of the Parties that the proceedings in the case under consideration had in effect been instituted by two successive notifications of the Special Agreement constituted by the Framework Agreement on the Peaceful Settlement of the Territorial Dispute between the Great Socialist People's Libyan Arab Jamahiriya and the Republic of Chad, done at Algiers on 31 August 1989, filed by the Libyan Arab Jamahiriya on 31 August 1990, and the communication from Chad filed on 3 September 1990, read in conjunction with the letter from the Agent of Chad of 28 September 1990, and that the procedure in the case should be determined by the Court on that basis, pursuant to Article 46, paragraph 2, of the Rules of the Court.

Having ascertained the views of the Parties, the Court decided by an order of 26 October 1990³⁰⁶ that, as provided in Article 46, paragraph 2, of the Rules of Court, each Party should file a Memorial and Counter-Memorial, within the same time-limit, and fixed 26 August 1991 as the time-limit for the Memorials.

B. CONTENTIOUS CASES BEFORE A CHAMBER

LAND, ISLAND AND MARITIME FRONTIER DISPUTE
(EL SALVADOR/HONDURAS)³⁰⁷

In an Order of 28 February 1990,³⁰⁸ adopted by 12 votes to 3, the Court, having considered the observations submitted by the Parties on Nicaragua's application for permission to intervene in the case, and the Applicant's comments thereon, concluded that it was sufficiently informed of the views of the States concerned without there being any need for oral proceedings, and found that it was for the Chamber formed to deal with the case to decide whether the application for permission to intervene should be granted. Judge Oda appended a declaration,³⁰⁹ and Judges Elias, Tarasov and Shahabuddeen appended dissenting opinions³¹⁰ to the order.

Between 5 and 8 June 1990 the Chamber, at five public sittings, heard oral arguments on the Nicaraguan Application for permission to intervene, presented on behalf of Nicaragua, El Salvador and Honduras.

At a public sitting held on 13 September 1990, the Chamber delivered its Judgment on the Application by Nicaragua for permission to intervene.³¹¹ An analysis of the Judgment is given below and is followed by the text of the operative clause.³¹²

I. *Proceedings and submissions by the Parties* (paras. 1-22)

By a joint notification dated 11 December 1986, filed in the Registry of the Court the same day, the Ministers for Foreign Affairs of the Republic of Honduras and the Republic of El Salvador transmitted to the Registrar a certified copy of a Special Agreement in Spanish, signed in the City of Esquipulas, Republic of Guatemala, on 24 May 1986. Its preamble refers to the conclusion on 30 October 1980, in Lima, Peru, of a General Peace Treaty between the two States, whereby, *inter alia*,

they delimited certain sections of their common land frontier; and it records that no direct settlement had been achieved in respect of the remaining land areas, or as regards “the legal situation of the islands and maritime spaces”.

Article 2 of the Special Agreement, which defines the subject of the dispute, reads, in the translation approved by the Parties:

“The Parties request the Chamber:

1. To delimit the boundary line in the zones or sections not described in Article 16 of the General Treaty of Peace of 30 October 1980.
2. To determine the legal situation of the islands and maritime spaces.”

On 17 November 1989 the Republic of Nicaragua filed a request for permission to intervene under Article 62 of the Statute of the Court in the proceedings instituted by the notification of the Special Agreement.

The Court, in an Order dated 28 February 1990,³¹³ found that it was for the Chamber formed to deal with the present case to decide whether Nicaragua’s request should be granted.

II. *Nature and extent of the dispute* (paras. 23-33)

The Chamber observed that the dispute between El Salvador and Honduras which was the subject of the Special Agreement concerned several distinct though in some respects interrelated matters. The Chamber was asked first to delimit the land frontier line between the two States in the areas or sections not described in Article 16 of the General Peace Treaty concluded by them on 30 October 1980; Nicaragua was not seeking to intervene in this aspect of the proceedings. The Chamber was also to “determine the legal situation of the islands”, and that of the “maritime spaces”.

The geographical context of the island and maritime aspects of the dispute, and the nature and extent of the dispute as appeared from the Parties’ claims before the Chamber, are as follows.

The Gulf of Fonseca lies on the Pacific coast of Central America, opening to the ocean in a generally south-westerly direction. The north-west coast of the Gulf is the land territory of El Salvador, and the south-east coast that of Nicaragua; the land territory of Honduras lies between the two, with a substantial coast on the inner part of the Gulf. The entrance to the Gulf, between Punta Amapala in El Salvador to the northwest, and Punta Cosigüina in Nicaragua to the south-east, is some 19 nautical miles wide. The penetration of the Gulf from a line drawn between these points varies between 30 and 32 nautical miles. Within the Gulf of Fonseca, there is a considerable number of islands and islets.

El Salvador asks that Chamber to find that

“El Salvador has and had sovereignty over all the islands in the Gulf of Fonseca, with the exception of the Island of Zacate Grande which can be considered as forming part of the coast of Honduras”.

Honduras for its part invites the Chamber to find that the islands of Meanguera and Meanguerita are the only islands in dispute between the Parties, so that the Chamber is not, according to Honduras, called upon to determine sovereignty over any of the other islands, and to declare the sovereignty of Honduras over Meanguera and Meanguerita.

The Chamber considered that the detailed history of the dispute was not to the purpose, but that two events concerning the maritime areas must be mentioned. First,

the waters within the Gulf of Fonseca between Honduras and Nicaragua were to an important extent delimited in 1900 by a Mixed Commission established pursuant to a Treaty concluded between the two States on 7 October 1894, but the delimitation line did not extend so far as to meet a closing line between Punta Amapala and Punta Cosigüina.

The second event to be mentioned was the following. In 1916 El Salvador brought proceedings against Nicaragua in the Central American Court of Justice, claiming *inter alia* that the Bryan-Chamorro Treaty concluded by Nicaragua with the United States of America, for the construction of a naval base, "ignored and violated the rights of co-ownership possessed by El Salvador in the Gulf of Fonseca".

Nicaragua resisted the claim contending (*inter alia*) that the lack of demarcation of frontiers between the riparian States did "not result in common ownership". The Decision of the Central American Court of Justice dated 9 March 1917 records the unanimous view of the judges that the international status of the Gulf of Fonseca was that of "an historic bay possessed of the characteristics of a closed sea", and in its "Examination of facts and law", the Court found:

"WHEREAS: The legal status of the Gulf of Fonseca having been recognized by this Court to be that of a historic bay possessed of the characteristics of a closed sea, the three riparian States of El Salvador, Honduras and Nicaragua are, therefore, recognized as coowners of its waters, except as to the littoral marine league which is the exclusive property of each. . . ."³¹⁴

It is claimed by El Salvador in its Memorial in the present case that:

"On the basis of the 1917 judgement an objective legal regime has been established in the Gulf. Even if initially the judgement was binding only in respect of the direct parties to the litigation. Nicaragua and El Salvador, the legal status recognized therein has been consolidated in the course of time; its effects extend to third States, and in particular, they extend to Honduras."

It further claims that the juridical situation of the Gulf "does not permit the dividing up of the waters held in condominium", with the exception of "a territorial sea within the Gulf", recognized by the Central American Court of Justice. It therefore asks the Chamber to adjudge and declare that:

"The juridical position of the maritime spaces within the Gulf of Fonseca corresponds to the juridical position established by the Judgement of the Central American Court of Justice rendered March 9th 1917, as accepted and applied there after."

It also contends that

"So far as the maritime spaces are concerned, the Parties have not asked the Chamber either to trace a line of delimitation or to define the Rules and Principles of Public International Law applicable to a delimitation of maritime spaces, either inside or outside the Gulf of Fonseca."

Honduras rejects the view that the 1917 Judgement produced or reflected an objective legal régime, contending that in the case of

"a judgment or arbitral award laying down a delimitation as between the parties to a dispute, the solution therein adopted can only be opposed to the parties".

It also observes that

"It is not the 1917 Judgement which confers sovereignty upon the riparian States over the waters of the Bay of Fonseca. That sovereignty antecedes considerably

that judgment between two riparian States, since it dates back to the creation of the three States concerned.”

Honduras’s contention as to the legal situation of the maritime spaces, to be examined further below, related to their delimitation between the Parties. It considers that the Chamber has jurisdiction under the Special Agreement to effect such delimitation, and has indicated what, in the view of Honduras, should be the course of the delimitation line.

As regards maritime spaces situated outside the closing line of the Gulf, Honduras asks the Chamber to find that the “community of interests” between El Salvador and Honduras as coastal States of the Gulf implies that they each have an equal right to exercise jurisdiction over such spaces. On this basis, it asks the Chamber to determine a line of delimitation extending 200 miles seaward, to delimit the territorial sea, the exclusive economic zone and the continental shelf of the two Parties. El Salvador, however, contends that the Chamber does not, under the Special Agreement, have jurisdiction to delimit maritime areas outside the closing line of the Gulf. El Salvador denies that Honduras has any legitimate claim to any part of the continental shelf or exclusive economic zone in the Pacific, outside the Gulf; it is however prepared to accept that this question be decided by the Chamber.

III. *Requirements for intervention under Article 62 of the Statute and Article 81 of the Rules of Court* (paras. 35-101)

In its Application for permission to intervene, filed on 17 November 1989, Nicaragua stated that the Application was made by virtue of Article 36, paragraph 1, and Article 62 of the Statute. An application under Article 62 is required by Article 81, paragraph 1, of the Rules of Court to be filed “as soon as possible, and not later than the closure of the written proceedings”. The Application of Nicaragua was filed in the Registry of the Court two months before the time-limit fixed for the filing of the Parties’ replies.

By Article 81, paragraph 2, of the Rules of Court, a State seeking to intervene is required to specify the case to which it relates and to set out:

- “(a) the interest of a legal nature which the State applying to intervene considers may be affected by the decision in that case;
- (b) the precise object of the intervention;
- (c) any basis of jurisdiction which is claimed to exist as between the State applying to intervene and the Parties to the case”.

The Chamber first examined arguments of El Salvador which were put forward as grounds for the Chamber to reject the Application of Nicaragua *in limine*, without there being any need for further examination of its compliance with Article 62 of the Statute of the Court. These arguments, none of which were upheld by the Chamber, related to the formal compliance of the Application with the requirements of Article 81, paragraph 2, of the Rules of Court, to the alleged “untimeliness” of the Application in view of requests contained in it which would be disruptive at the current advanced stage of the proceedings, and to the absence of negotiations prior to the filing of the Application.

(a) *Interest of a legal nature* (paras. 37 and 52-84)

Nicaragua stated in its Application that:

“As can be appreciated in Article 2 of the Special Agreement . . . the Government of Nicaragua has an interest of a legal nature which must inevitably be affected by a decision of the Chamber.” (para. 2.)

It then proceeded to enumerate the “particular considerations supporting this opinion”. The Chamber observed that, as the Court had made clear in previous cases, a State applying for permission to intervene under Article 62 of the Statute had to show an “interest of a legal nature which may be affected” by the Court’s decision in the case, or that *un intérêt d’ordre juridique est pour lui en cause* — the criterion stated in Article 62.

In the instant case, Nicaragua had gone further; citing the case concerning *Monetary Gold Removed from Rome in 1943*,³¹⁵ it had argued that its interests were so much part of the subject-matter of the case that the Chamber could not properly exercise its jurisdiction without the participation of Nicaragua. The Chamber therefore examined the way in which the interests of Albania would have formed “the very subject-matter of the decision” in the case concerning *Monetary Gold Removed from Rome in 1943*, and explained that the Court’s finding in that case was that, while the presence in the Statute of Article 62 might implicitly authorize continuance of the proceedings in the absence of a State whose “interests of a legal nature” might be “affected”, this did not justify continuance of proceedings in the absence of a State whose international responsibility would be “the very subject-matter of the decision”. There had been no need to decide what the position would have been had Albania applied for permission to intervene under Article 62. The Chamber concluded that, if in the instant case the legal interests of Nicaragua would have formed part of “the very subject-matter of the decision”, as Nicaragua had suggested, this would doubtless have justified an intervention by Nicaragua under Article 62 of the Statute, which laid down a less stringent criterion. The question would then have arisen, however, of whether such intervention under Article 62 of the Statute would have enabled the Chamber to pronounce upon the legal interests of Nicaragua which it was suggested by Nicaragua would have formed the very subject-matter of the decision. The Chamber would therefore first consider whether Nicaragua had shown the existence of an “interest of a legal nature which may be affected by the decision”, so as to justify an intervention; and if such was the case, would then consider whether that interest might in fact form “the very subject-matter of the decision” as did the interests of Albania in the case concerning *Monetary Gold Removed from Rome in 1943*.

The Chamber further observed that Article 62 of the Statute contemplated intervention on the basis of an interest of a legal nature “which may be affected by the decision in the case”. What had been requested of the Chamber by the Special Agreement in the instant case was not however a decision on a single circumscribed issue, but several decisions on various aspects of the overall dispute between the Parties. The Chamber had to consider the possible effect on legal interests asserted by Nicaragua of its eventual decision on each of the different issues which might fall to be determined, in order to define the scope of any intervention which might be found to be justified under Article 62 of the Statute. If a State could satisfy the Court that it had an interest of a legal nature which might be affected by the decision in the case, it might be permitted to intervene in respect of that interest. But that did not mean that the intervening State was then also permitted to make excursions into other aspects of the case; this was in fact recognized by Nicaragua. Since the scope of any permitted

intervention had to be determined, the Chamber had to consider the matters of the islands, the situation of the waters within the Gulf, the possible delimitation of the waters within the Gulf, the situation of the waters outside the Gulf, and the possible delimitation of the waters outside the Gulf.

Whether all of these matters were indeed raised by the wording of Article 2, paragraph 2, of the Special Agreement was itself disputed between the Parties to the case. Accordingly, the list of matters to be considered was in that phase of the proceedings to be entirely without prejudice to the meaning of Article 2, paragraph 2, as a whole, or of any of the terms as used in that Article. The Chamber clearly could not take any stand in the proceedings on the request for permission to intervene on the disputes between the Parties concerning the proper meaning of the Special Agreement; it had to determine the questions raised by Nicaragua's Application while leaving those questions of interpretation entirely open.

Burden of proof (paras. 61-63)

There was some argument before the Chamber on the question of the extent of the burden of proof on a State seeking to intervene. In the Chamber's opinion it was clear, first, that it was for a State seeking to intervene to demonstrate convincingly what it asserted, and thus to bear the burden of proof; and, second, that it had only to show that its interest "might" be affected, not that it would or had to be affected. What needed to be shown by a State seeking permission to intervene could only be judged *in concreto* and in relation to all the circumstances of a particular case. It was for the State seeking to intervene to identify the interest of a legal nature which it considered might be affected by the decision in the case, and to show in what way that interest might be affected: it was not for the Court itself — or in the instant case the Chamber — to substitute itself for the State in that respect. The Chamber also bore in mind in this connection that the Parties to the case were in dispute about the interpretation of the very provision of the Special Agreement invoked in Nicaragua's Application. It noted the reliance by Nicaragua on the principle of recognition, or on estoppel, but did not accept Nicaragua's contentions in that respect.

The Chamber then turned to consideration of the several specific issues in the case which might call for decision, as indicated above, in order to determine whether it had been shown that such decision might affect a Nicaraguan interest of a legal nature.

1. *Legal situation of the islands* (paras. 65-66)

So far as the decision requested of the Chamber by the Parties is to determine the legal situation of the islands, the Chamber concluded that it should not grant permission for intervention by Nicaragua, in the absence of any Nicaraguan interest liable to be directly affected by a decision on that issue. Any possible effects of the islands as relevant circumstances for delimitation of maritime spaces fell to be considered in the context of the question of whether Nicaragua should be permitted to intervene on the basis of a legal interest which might be affected by a decision on the legal situation of the waters of the Gulf.

2. *Legal situation of the waters within the Gulf* (paras. 67-79)

(i) *The regime of the waters*

It is El Salvador's case that, as between El Salvador, Honduras and Nicaragua, there exists "a régime of community, co-ownership or joint sovereignty" over such of the waters of the Gulf of Fonseca "as lie outside the area of exclusive jurisdiction", an "objective legal régime" on the basis of the 1917 Judgement of the Central

American Court of Justice. On that basis, El Salvador considers that the juridical situation of the Gulf does not permit the dividing up of the waters held in condominium. El Salvador also contends that the Special Agreement does not confer jurisdiction to effect any such delimitation. Honduras on the other hand contends, *inter alia*, that “the Gulf’s specific geographical situation creates a special situation between the riparian States which generates a community of interests” which in turn “calls for a special legal régime to determine their mutual relations”; that the community of interests “does not mean integration and the abolition of boundaries” but, on the contrary, “the clear definition of those boundaries as a condition of effective co-operation”; and that each of the three riparian States “has an equal right to a portion of the internal waters”.

The Chamber considered that quite apart from the question of the legal status of the 1917 Judgement the fact, however, was that El Salvador now claimed that the waters of the Gulf were subject to a condominium of the coastal States, and had indeed suggested that that régime “would in any case have been applicable to the Gulf under customary international law”. Nicaragua had referred to the fact that it plainly had rights in the Gulf of Fonseca, the existence of which was undisputed, and contended that

“The condominium, if it is declared to be applicable, would by its very nature involve three riparians, and not only the parties to the Special Agreement.”

In the opinion of the Chamber, this was a sufficient demonstration by Nicaragua that it had an interest of a legal nature in the determination of whether or not this was the régime governing the waters of the Gulf: the very definition of a condominium pointed to that conclusion. Furthermore, a decision in favour of some of the Honduran theses would equally be such as might affect legal interests of Nicaragua. The “community of interests” constituting the starting-point of the arguments of Honduras was a community which, like the condominiums claimed by El Salvador, embraced Nicaragua as one of the three riparian States, and Nicaragua had therefore to be interested also in that question. The Chamber, therefore, found that Nicaragua had shown to its satisfaction the existence of an interest of a legal nature which might be affected by its decision on those questions.

On the other hand, while the Chamber was thus satisfied that Nicaragua had a legal interest which might be affected by the decision of the Chamber on the question of whether or not the waters of the Gulf of Fonseca were subject to a condominium or a “community of interests” of the three riparian States, it could not accept the contention of Nicaragua that the legal interest of Nicaragua “would form the very subject-matter of the decision”, in the sense in which that phrase was used in the case concerning *Monetary Gold Removed from Rome in 1943*, to describe the interests of Albania. It followed that the question of whether the Chamber would have power to take a decision on those questions, without the participation of Nicaragua in the proceedings, did not arise; but that conditions for an intervention by Nicaragua in that aspect of the case were nevertheless clearly fulfilled.

(ii) Possible delimitation of the waters

If the Chamber had not been satisfied that there was a condominium over the waters of the Gulf of such a kind as to exclude any delimitation, it might then have been called upon to effect a delimitation, if it had been satisfied that it had jurisdiction to do so. The Chamber had therefore to consider whether a decision as to delimitation of the waters of the Gulf might affect an interest of a legal nature appertaining to

Nicaragua, in order to determine whether Nicaragua should also be permitted to intervene in respect of that aspect of the case. It did not, however, have to consider the possible effect on Nicaragua's interests of every conceivable delimitation which might be arrived at; it is for the State seeking to intervene to show that its interests might be affected by a particular delimitation, or by delimitation in general. Honduras had already indicated in its pleadings how, in its view, the delimitation should be effected. El Salvador, consistently with its position, had not given its views on possible lines of delimitation. Nicaragua, for its part, had not given any indication of any specific line of delimitation which it considered would affect its interests.

The Chamber examined arguments put forward in the Nicaraguan Application as considerations supporting its assertion of a legal interest; it did not consider that an interest of a third State in the general legal rules and principles likely to be applied by the decision could justify an intervention, or that the taking into account of all the coasts and coastal relationships within the Gulf as a geographical fact for the purposes of a delimitation between El Salvador and Honduras meant that the interest of a third riparian State, Nicaragua, might be affected. The Chamber observed that the essential difficulty in which it found itself, on this matter of a possible delimitation within the waters of the Gulf, was that Nicaragua did not in its Application indicate any maritime spaces in which Nicaragua might have a legal interest which could be said to be such as to be affected by a possible delimitation line between El Salvador and Honduras.

Accordingly the Chamber was not satisfied that a decision in the instant case as to the law applicable to a delimitation, or effecting a delimitation, between Honduras and El Salvador, of the waters of the Gulf (except as regards the alleged "community of interests"), would affect Nicaragua's interests. The Chamber therefore considered that although Nicaragua had, for purposes of Article 62 of the Statute, shown an interest of a legal nature which might be affected by the Chamber's decision on the question of the existence or nature of the régime of condominium or community of interests within the Gulf of Fonseca, it had not shown such an interest which might be affected by the Chamber's decision on any question of delimitation within the Gulf. That finding also disposed of the question, referred to above, of the possible relevance of a decision in the island dispute.

3. *Legal situation of waters outside the Gulf* (paras. 80-84)

The Chamber then turned to the question of the possible effect on Nicaragua's legal interests of its future decision on the waters outside the Gulf. Honduras claims that by the Special Agreement

"the Parties have necessarily endowed the Court with competence to delimit the zones of territorial sea and the exclusive economic zones pertaining to Honduras and El Salvador respectively"

and asks the Chamber to endorse the delimitation line advanced by Honduras for the waters outside the Gulf as "productive of an equitable solution". El Salvador interprets the Special Agreement as not authorizing the Chamber to effect any delimitation. Both Parties contended that Nicaragua had no legal interest which might be affected by the decision on the "legal situation" of the maritime spaces outside the Gulf and both Parties denied that the implementation by the Chamber of their respective interpretations of Article 2 could affect Nicaragua's legal interests.

The Chamber noted Honduras's demonstration of a proposed scheme of delimitation designed to avoid any impingement upon waters outside the Gulf which might conceivably be claimed by Nicaragua, upon which the Chamber could not pass in the

incidental proceedings, and before hearing argument on the merits. The demonstration did call for some response, in the form of an indication, by the State seeking to intervene, of how those proposals would affect a specific interest of that State, or what other possible delimitation would affect that interest. The charted proposition of Honduras thus gave Nicaragua the opportunity to indicate how the Honduran proposals might affect “to a significant extent” any possible Nicaraguan legal interest in waters west of that Honduran line. Nicaragua had failed to indicate how that delimitation, or any other delimitation regarded by it as a possibility, would affect an actual Nicaraguan interest of a legal nature. The Chamber therefore could not grant Nicaragua permission to intervene over the delimitation of the waters outside the Gulf closing line.

(b) *Object of the intervention* (paras. 85-92)

The Chamber then turned to the question of the object of Nicaragua’s Application for permission to intervene in the case. A statement of the “precise object of the intervention” is required by Article 81, paragraph 2 (b), of the Rules of Court.

Nicaragua’s indication, in its Application for permission to intervene, of the object of its intervention in the instant case, was as follows:

“The intervention for which permission is requested has the following objects:

First, generally to protect the legal rights of the Republic of Nicaragua in the Gulf of Fonseca and the adjacent maritime areas by all legal means available.

Secondly, to intervene in the proceedings in order to inform the Court of the nature of the legal rights of Nicaragua which are in issue in the dispute. This form of intervention would have the conservative purpose of seeking to ensure that the determination of the Chamber did not trench upon the legal rights and interests of the Republic of Nicaragua . . .”

At the hearings, the Agent of Nicaragua emphasized its willingness to adjust to any procedure indicated by the Chamber. It had been contended, in particular by El Salvador, that Nicaragua’s stated object was not a proper object.

In so far as the object of Nicaragua’s intervention was “to inform the Court of the nature of the legal rights of Nicaragua which are in issue in the dispute”, it could not be said that that object was not a proper one: it seemed indeed to accord with the function of intervention. The use in an Application to intervene of a perhaps somewhat more forceful expression (“trench upon the legal rights and interests”) was immaterial, provided the object actually aimed at was a proper one. Secondly, it did not seem to the Chamber that for a State to seek by intervention “to protect its claims by all legal means” necessarily involved the inclusion in such means of “that of seeking a favourable judicial pronouncement” on its own claims. The “legal means available” must be those afforded by the institution of intervention for the protection of a third State’s legal interests. So understood, that object could not be regarded as improper.

(c) *Basis of jurisdiction: valid link of jurisdiction* (paras. 93-101)

The Chamber further had to consider the argument of El Salvador that for Nicaragua to intervene it had in addition to show a “valid link of jurisdiction” between Nicaragua and the Parties. In its Application, Nicaragua did not assert the existence of

any basis of jurisdiction other than the Statute itself, and expressed the view that Article 62 did not require a separate title of jurisdiction.

The question was whether the existence of a valid link of jurisdiction with the parties to the case — in the sense of a basis of jurisdiction which could be invoked, by a State seeking to intervene in order to institute proceedings against either or both of the parties — is an essential condition for the granting of permission to intervene under Article 62 of the Statute. In order to decide the point the Chamber had to consider the general principle of consensual jurisdiction in its relation with the institution of intervention.

There can be no doubt of the importance of this general principle. The pattern of international judicial settlement under the Statute is that two or more States agree that the Court shall hear and determine a particular dispute. Such agreement may be given *ad hoc*, by Special Agreement or otherwise, or may result from the invocation, in relation to the particular dispute, of a compromissory clause of a treaty or of the mechanism of Article 36, paragraph 2, of the Court's Statute. Those States are the "parties" to the proceedings, and are bound by the Court's eventual decision because they have agreed to confer jurisdiction on the Court to decide the case, the decision of the Court having binding force as provided for in Article 59 of the Statute. Normally, therefore, no other State may involve itself in the proceedings without the consent of the original parties. Nevertheless, procedures for a "third" State to intervene in a case are indicated in Articles 62 and 63 of the Court's Statute. The competence of the Court in this matter of intervention is not, like its competence to hear and determine the dispute referred to it, derived from the consent of the parties to the case, but from the consent given by them, in becoming parties to the Court's Statute, to the Court's exercise of its powers conferred by the Statute. Thus the Court has the competence to permit an intervention even though it be opposed by one or both of the parties to the case. The nature of the competence thus created by Article 62 of the Statute is definable by reference to the object and purpose of intervention, as this appears from Article 62 of the Statute.

Intervention under Article 62 of the Statute is for the purpose of protecting a State's "interest of a legal nature" that might be affected by a decision in an existing case already established between other States, namely the parties to the case. It is not intended to enable a third State to tack on a new case, to become a new party, and so have its own claims adjudicated by the Court. Intervention cannot have been intended to be employed as a substitute for contentious proceedings. Acceptance of the Statute by a State does not of itself create jurisdiction to entertain a particular case: the specific consent of the parties is a prerequisite of that jurisdiction. If an intervener were held to become a party to a case merely as a consequence of being permitted to intervene in it, this would be a very considerable departure from the principle of consensual jurisdiction. It is therefore clear that a State which is allowed to intervene in a case does not, by reason only of being an intervener, become also a party to the case.

It thus follows from the juridical nature and from the purposes of intervention that the existence of a valid link of jurisdiction between the would-be intervener and the parties is not a requirement for the success of the application. On the contrary, the procedure of intervention is to ensure that a State with possibly affected interests may be permitted to intervene even though there is no jurisdictional link and it therefore cannot become a party. The Chamber therefore concluded that the absence of a jurisdictional link between Nicaragua and the Parties to this case was no bar to permission being given for intervention.

IV. *Procedural rights of State permitted to intervene* (paras. 102-104)

Since this was the first case in the history of the two Courts in which a State would have been accorded permission to intervene under Article 62 of the Statute, it appeared appropriate to give some indication of the extent of the procedural rights acquired by the intervening State as a result of that permission. In the first place, as has been explained above, the intervening State does not become party to the proceedings, and does not acquire the rights, or become subject to the obligations, which attach to the status of a party under the Statute and Rules of Court, or the general principles of procedural law. Nicaragua, as an intervener, has of course a right to be heard by the Chamber. That right is regulated by Article 85 of the Rules of Court, which provides for submission of a written statement, and participation in the hearings.

The scope of the intervention in this particular case, in relation to the scope of the case as a whole, necessarily involved limitations of the right of the intervener to be heard. An initial limitation was that it was not for the intervener to address argument to the Chamber on the interpretation of the Special Agreement concluded between the Parties on 24 May 1986, because the Special Agreement was, for Nicaragua, *res inter alios acta*; and Nicaragua had disclaimed any intention of involving itself in the dispute over the land boundary. The Chamber then summarized the aspects of the case in respect of which Nicaragua had shown the existence of an interest of a legal nature and those in respect of which it had not, with the consequent limitations on the scope of the intervention permitted.

Operative clause (para. 105)

“THE CHAMBER,

Unanimously,

1. *Finds* that the Republic of Nicaragua has shown that it has an interest of a legal nature which may be affected by part of the Judgment of the Chamber on the merits in the present case, namely its decision on the legal regime of the waters of the Gulf of Fonseca, but has not shown such an interest which may be affected by any decision which the Chamber may be required to make concerning the delimitation of those waters, or any decision as to the legal situation of the maritime spaces outside the Gulf, or any decision as to the legal situation of the islands in the Gulf;

2. *Decides* accordingly that the Republic of Nicaragua is permitted to intervene in the case, pursuant to Article 62 of the Statute, to the extent, in the manner and for the purposes set out in the present Judgment, but not further or otherwise.”

*

Judge Oda appended a separate opinion as to the Judgment.³¹⁶

*

By an Order of 14 September 1990,³¹⁷ the President of the Chamber, having ascertained the views of the Parties and of the intervening State, fixed 14 December 1990 as the time-limit for the submission by Nicaragua of a written statement and 14 March 1991 as the time-limit within which the Parties might, if they so desired, fur-

nish their written observations on the written statement of Nicaragua. Both the written statement by Nicaragua and the written observations thereon by the two Parties were filed within the prescribed time-limit.

6. INTERNATIONAL LAW COMMISSION³¹⁸

FORTY-SECOND SESSION OF THE COMMISSION³¹⁹

The International Law Commission held its forty-second session at Geneva from 1 May to 20 July 1990. The Commission considered all items on its agenda.

On the question of the draft Code of Crimes against the Peace and Security of Mankind, the Commission had before it the eighth report of the Special Rapporteur on the topic,³²⁰ which contained in particular three draft articles dealing respectively with complicity, conspiracy and attempt as well as two draft articles on illicit traffic in narcotic drugs. The report also contained a section entitled "Statute of an international criminal court". At the conclusion of its discussion, the Commission referred to the Drafting Committee the above-mentioned draft articles, together with revised versions thereof submitted by the Special Rapporteur in the light of the debate. Moreover, the Commission provisionally adopted, on the recommendation of the Drafting Committee, three new articles on the topic (with commentaries thereto) for inclusion in Chapter II of the Code, namely article 16 ("International terrorism"), article 18 ("Recruitment, use, financing and training of mercenaries"), and article X ("Illicit traffic in narcotic drugs"). The Commission also discussed the question of an article on breaches of treaties designed to ensure international peace and security, but it was not able to agree on guidelines for the future work of the Drafting Committee on this question. Furthermore, the Commission established a Working Group to consider the request addressed to it by the General Assembly in its resolution 44/39 of 4 December 1989 on the question of establishing an international criminal court or other international criminal trial mechanism with jurisdiction over persons alleged to have committed certain crimes. The Commission's examination of the question reflected a broad agreement in principle on the desirability of the establishment of a permanent international criminal court to be brought into relationship with the United Nations system, although different views were expressed as to the structure and scope of jurisdiction of such a court.³²¹

Regarding the question of jurisdictional immunities of States and their property, the Commission had before it the third report of the Special Rapporteur³²² which contained, for a number of the articles adopted on first reading, revised texts proposed by the Special Rapporteur. At the conclusion of its discussions, the Commission referred articles 12 to 28 to the Drafting Committee. The Commission received from the Drafting Committee a report containing 16 articles adopted on second reading by the Commission at the current session. It took note of the report and decided to defer action on it until the next session.

With respect to the question of the law on the non-navigational uses of international watercourses, the Commission's discussions were held on the basis of the second part of the fifth report of the Special Rapporteur,³²³ which contained in particular two draft articles respectively entitled "Relationship between navigational and non-navigational uses: absence of priority among users" and "Regulation of international

watercourses", as well as on the basis of the first part of the Special Rapporteur's sixth report,³²⁴ which contained in particular three draft articles respectively entitled "Joint institutional management", "Protection of water resources and installations" and "Status of international watercourses and water installations in time of armed conflict" as well as an annex entitled "Implementation of the draft articles". At the conclusion of its discussions, the Commission referred to the Drafting Committee the above-mentioned draft articles as well as article 3, paragraph 1, and article 4 of the annex. The Commission furthermore provisionally adopted six new articles on the topic (with commentaries thereto), namely articles 22 ("Protection and preservation of ecosystems"), 23 ("Prevention, reduction and control of pollution"), 24 ("Introduction of alien or new species") and 25 ("Protection and preservation of the marine environment"), comprising part IV of the draft, entitled ("Protection and preservation"), as well as articles 26 ("Prevention and mitigation of harmful conditions") and 27 ("Emergency situations"), comprising part V, entitled "Harmful conditions and emergency situations". The second part of the sixth report of the Special Rapporteur³²⁵ was not discussed for lack of time.

Regarding the question of State responsibility, the Commission had before it the second report of the Special Rapporteur,³²⁶ which contained, *inter alia*, three draft articles respectively entitled "Reparation by equivalent", "Interest" and "Satisfaction and guarantees of non-repetition". At the conclusion of its discussions, the Commission referred all three draft articles to the Drafting Committee.

On the question of relations between States and international organizations (second part of the topic), the Commission's discussions were held on the basis of the fourth report of the Special Rapporteur,³²⁷ which contained 11 draft articles, namely articles 1 to 4 comprising part I, entitled "Introduction"; articles 5 and 6 comprising part II, entitled "Legal personality"; and articles 7 to 11 comprising part III, entitled "Property, funds and assets". At the conclusion of its discussions, the Commission referred all 11 articles to the Drafting Committee. The fifth report of the Special Rapporteur³²⁸ was not discussed for lack of time.

Regarding the question of international liability for injurious consequences arising out of acts not prohibited by international law, the Commission had before it the sixth report of the Special Rapporteur,³²⁹ which contained, *inter alia*, 33 articles, namely articles 1 to 5 comprising chapter I, entitled "General provisions"; articles 6 to 10 comprising chapter II, entitled "Principles"; articles 11 to 20 comprising chapter III, entitled "Prevention"; articles 21 to 27 comprising chapter IV, entitled "Liability"; and articles 28 to 33 comprising chapter V, entitled "Civil liability". At the conclusion of its discussions, the Commission decided to revert at its next session to some policy and technical issues raised in the sixth report.

Consideration by the General Assembly

At its forty-fifth session, the General Assembly had before it the report of the International Law Commission on the work of its forty-second session.³³⁰ By its resolution 45/41 of 28 November 1990,³³¹ adopted on the recommendation of the Sixth Committee,³³² the General Assembly took note of the report of the International Law Commission on the work of its forty-second session; requested the Commission to continue its work on the topics in its current programme, listed as items 3 to 8 in paragraph 9 of its report; invited the Commission, as it continued its work on the elaboration of the draft Code of Crimes against the Peace and Security of Mankind, to consider further and analyse the issues raised in its report concerning the question of

an international criminal jurisdiction, including the possibility of establishing an international criminal court or other international criminal trial mechanism; and expressed its appreciation for the efforts of the Commission to improve its procedures and methods of work, and to formulate proposals on its future programme of work.

7. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW³³³

TWENTY-THIRD SESSION OF THE COMMISSION³³⁴

The United Nations Commission on International Trade Law held its twenty-third session in New York from 25 June to 6 July 1990.

In connection with the question of international countertrade, the Commission had before it a report entitled "Draft legal guide on drawing up contracts in international countertrade transactions: sample chapters".³³⁵ At the conclusion of its discussion on the report the Commission noted that there had been general agreement with the overall approach taken by the Secretariat in the draft chapters, both as to the structure of the legal guide and as to the nature of the description and advice contained therein. As to the procedure that should be followed to complete the preparation of the legal guide, the Commission decided that the Secretariat should prepare the remaining chapters and submit them, together with draft chapter VII,³³⁶ to a working group for consideration. Furthermore, the Commission decided that the Secretariat should redraft the chapters submitted to it at its current session and the chapters to be submitted to the Working Group in the light of the discussion at the current session and at the session of the Working Group and should submit the final text of the legal guide to the Commission at its twenty-fifth session, to be held in 1992.

With respect to international payments, the Commission had before it the reports of the Working Group on the work of its nineteenth³³⁷ and twentieth³³⁸ sessions, which indicated that the Group had continued its consideration of the draft Model Law on International Credit Transfers. The Commission expressed its confidence that the Working Group would be able to resolve the outstanding issues before it so that a text could be presented to the Commission at its twenty-fourth session.

With regard to the question of procurement, the Commission had before it the report of the Working Group on the work of its eleventh session,³³⁹ at which the Group had considered the draft of a model law on procurement prepared by the Secretariat.³⁴⁰ During the discussion in the Commission the view was expressed that the work on the model law should take into account its possible relevance to procurement conducted by private companies. It was stated that for certain large purchases such companies were increasingly resorting to the types of procedures laid down in the draft model law. The Commission expressed appreciation for the work performed by the Working Group so far and requested it to proceed with its work expeditiously.

In connection with the question of guarantees and stand-by letters of credit, the Commission discussed the report of the Working Group on the work of its thirteenth session.³⁴¹ The Commission noted that the Working Group had commenced its work by considering possible issues of a uniform law as discussed in a note by the Secretariat.³⁴² Those issues related to the substantive scope of the uniform law, party autonomy and its limits, and possible rules of interpretation. The Commission also noted

that the Working Group had engaged in a preliminary exchange of views on issues relating to the form and time of establishment of the guarantee or stand-by letter of credit. The Commission further noted that the Working Group had requested the Secretariat to submit to the next session of the Group a first draft set of articles, with possible variants, on the above issues as well as a note discussing other possible issues to be covered by the uniform law. The Commission expressed its appreciation for the progress made by the Working Group so far and requested it to continue carrying out its task expeditiously.

The Committee also had before it the report entitled "Preliminary study of legal issues related to the formation of contracts by electronic means".³⁴³ The report noted that in prior reports the subject had been considered under the general heading of "automatic data processing" (ADP) but that, in recent years, the term generally used to describe the use of computers for business applications had been changed to "electronic data interchange" (EDI). The Commission expressed its appreciation for the report submitted to it and requested the Secretariat to continue its examination of the legal issues related to the formation of contracts by electronic means and to prepare for the Commission at its twenty-fourth session the report that had been suggested. The Commission expressed the wish that the report would give it the basis on which to decide at that time what work might be undertaken by the Commission in the field.

With regard to the question of coordination of work, the Commission considered a report of the Secretary-General on current activities of international organizations related to the harmonization and unification of international trade law.³⁴⁴ The Commission noted that the report was a valuable compilation of information on the activities of international organizations in this field and that it assisted the Commission in developing its own programme of work and fostering coordination in the activities of the various international organizations.

With respect to training and assistance, the Commission had before it a note by the Secretariat that set out the activities that had been carried out in this respect during the prior year as well as possible future activities in that field.³⁴⁵ The Commission expressed its approval of the activities of the Secretariat that had led to the expanded programme of seminars and symposia. It requested the Secretariat to continue its efforts to secure the financial, staff and administrative support necessary to place the programme on a firm and continuing basis.

Consideration by the General Assembly

At its forty-fifth session, the General Assembly, by its resolution 45/42 of 28 November 1990,³⁴⁶ adopted on the recommendation of the Sixth Committee,³⁴⁷ took note with appreciation of the report of the United Nations Commission on International Trade Law on the work of its twenty-third session; 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 this field in order to avoid duplication of effort and to promote efficiency, consistency and coherence in the unification and harmonization of international trade law; 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 sixth³⁴⁸ and seventh³⁴⁹ special sessions; and repeated its invitation to those States which had not yet done so to consider signing, ratifying or acceding to the conventions elaborated under the auspices of the Commission.

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 45/37 of 28 November 1990,³⁵⁰ adopted on the recommendation of the Sixth Committee,³⁵¹ the General Assembly urged all States that had not done so, in particular those which were host 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 Character³⁵² 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 above-mentioned Convention.

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

By its resolution 45/38 of 28 November 1990,³⁵³ adopted on the recommendation of the Sixth Committee,³⁵⁴ the General Assembly appreciated the virtually universal acceptance of the Geneva Conventions of 1949³⁵⁵ and the increasingly wide acceptance of the two additional protocols,³⁵⁶ appealed to all States parties to the Geneva Conventions of 1949 that had not done so 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) Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives

By its resolution 45/39 of 28 November 1990,³⁵⁷ adopted on the recommendation of the Sixth Committee,³⁵⁸ the General Assembly took note of the report of the Secretary-General;³⁵⁹ urged States to observe, implement and enforce the principles and rules of international law governing diplomatic and consular relations and, in particular, to ensure, in conformity with their international obligations, the protection, security and safety of the diplomatic and consular missions and representatives to international intergovernmental organizations and officials of such organizations officially present in territories under their jurisdiction, including practical 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, representatives and officials; also urged States to take all necessary measures at the national and international levels to prevent any acts of violence against the above-mentioned missions, representatives and officials and to bring offenders to justice; and 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.

(d) United Nations Decade of International Law

By its resolution 45/40 of 28 November 1990,³⁶⁰ adopted on the recommendation of the Sixth Committee,³⁶¹ the General Assembly, expressing its appreciation for the Secretary-General's report on the United Nations Decade of International Law³⁶² and having considered the report of the Sixth Committee on the matter,³⁶³ adopted the programme for the activities to be commenced during the first term (1990-1992) of the Decade as an integral part of the resolution, to which it was annexed; and invited all international organizations and institutions referred to in the programme to undertake the relevant activities outlined therein.

ANNEX

Programme for the activities to be commenced during the first term (1990-1992) of the United Nations Decade of International Law

I. PROMOTION OF THE ACCEPTANCE OF AND RESPECT FOR THE PRINCIPLES OF INTERNATIONAL LAW

1. The General Assembly, bearing in mind that maintenance of international peace and security is the underlying condition for the success of the implementation of the programme of the United Nations Decade of International Law, calls upon States to act in accordance with international law, and particularly the Charter of the United Nations.

2. States are invited to consider, if they have not yet done so, becoming parties to existing multilateral treaties, in particular those relevant to the progressive development of international law and its codification. International organizations under whose auspices such treaties are concluded are invited to indicate whether they publish periodic reports on the status of ratifications of and accessions to multilateral treaties and, if they do not, to indicate whether in their view such a process would be useful. Consideration should be given to the question of treaties which have not achieved wider participation or entered into force after a considerable lapse of time and the circumstances causing the situation.

3. States and international organizations are encouraged to provide assistance and technical advice to States, in particular to developing countries, to facilitate their participation in the process of multilateral treaty-making, including their adherence to and implementation of such multilateral treaties.

4. States are encouraged to report to the Secretary-General on ways and means, as provided for by the multilateral treaties to which they are parties, regarding the implementation of such treaties. The Secretary-General is requested to prepare a report on the basis of this information and to submit it to the General Assembly.

II. PROMOTION OF MEANS AND METHODS FOR THE PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES, INCLUDING RESORT TO AND FULL RESPECT FOR THE INTERNATIONAL COURT OF JUSTICE

1. The United Nations system of organizations and regional organizations, including the Asian-African Legal Consultative Committee, as well as the International Law Association, the Institute of International Law, the Hispano-Luso-American Institute of International Law and other international institutions working in the field of international law, and national societies of international law, are invited to study the means and methods for the peaceful settlement of disputes between States, including resort to and full respect for the International Court of Justice, and to present suggestions for the promotion thereof to the Sixth Committee.

2. States are invited to make proposals to the Sixth Committee in respect of the promotion of means and methods for the peaceful settlement of disputes between States, including resort to and full respect for the International Court of Justice.

3. The Sixth Committee is requested to consider, taking into account the above-mentioned suggestions and proposals, and, where appropriate, on the basis of a report of the Special

Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, or of the Working Group on the United Nations Decade of International Law, the following questions:

(a) Strengthening the use of means and methods for the peaceful settlement of disputes, with particular attention to the role to be played by the United Nations, as well as methods for early identification and prevention of disputes and their containment;

(b) Procedures for the peaceful settlement of disputes arising in specific areas of international law;

(c) Ways and means of encouraging greater recognition of the role of the International Court of Justice and its wider use in the peaceful settlement of disputes;

(d) Enhancement of cooperation of regional organizations with the United Nations system of organizations in respect of the peaceful settlement of disputes.

III. ENCOURAGEMENT OF THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW AND ITS CODIFICATION

1. International organizations, including the United Nations system of organizations and regional organizations, are invited to submit to the Secretary-General of the United Nations summary information regarding the programmes and results of their work relevant to the progressive development of international law and its codification, including their suggestions for future work in their specialized field, with an indication of the appropriate forum to undertake such work. Similarly, the Secretary-General is requested to prepare a report on the relevant activities of the United Nations, including those of the International Law Commission. Such information should be presented in a report by the Secretary-General to the Sixth Committee.

2. On the basis of the information mentioned in paragraph 1 of the present section, States are invited to submit suggestions for consideration by the Sixth Committee and, as appropriate, recommendations. In particular, efforts should be made to identify areas of international law which might be ripe for progressive development or codification.

3. The Sixth Committee is requested to study, taking into account General Assembly resolution 684 (VII) of 6 November 1952, its coordinating role with respect to, *inter alia*, the drafting of provisions of a legal nature and the consistent use of legal terminology in international instruments adopted by the General Assembly.

4. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization is requested to continue studying possible measures to strengthen the United Nations system for the maintenance of international peace and security. States, particularly those that proposed the inclusion of this question in the programme for the Decade, are invited to present draft texts to the Secretary-General or the Special Committee for consideration.

IV. ENCOURAGEMENT OF THE TEACHING, STUDY, DISSEMINATION AND WIDER APPRECIATION OF INTERNATIONAL LAW

1. The Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law is requested, in the context of the Decade, to formulate relevant guidelines for the Programme's activities and to report to the Sixth Committee on the activities carried out under the Programme in accordance with such guidelines. Special emphasis should be given to supporting academic and professional institutions already carrying out research and education in international law, as well as to encouraging the establishment of such institutions where they might not exist, particularly in the developing countries. States are encouraged to contribute to the strengthening of the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law.

2. States should encourage their educational institutions to introduce courses in international law for students studying law, political science, social sciences and other relevant disciplines; they should study the possibility of introducing topics of international law in the curricula of schools at the primary and secondary levels. Cooperation between institutions at the univer-

sity level among developing countries, on the one hand, and their cooperation with those of developed countries on the other, should be encouraged.

3. States should consider convening conferences of experts at the national and regional levels in order to study the question of preparing model curricula and materials for courses in international law, training of teachers in international law, preparation of textbooks on international law and the use of modern technology to facilitate the teaching of and research in international law.

4. The United Nations system of organizations, regional organizations and States should consider organizing seminars, symposia, training courses, lectures and meetings and undertaking studies on various aspects of international law. States and regional organizations have already expressed their readiness to undertake such activities on the following subjects: developing countries and international law (China); developing countries and international legislation on the environment (China); law of the sea (Yugoslavia); joint ventures in deep seabed mining (Asian-African Legal Consultative Committee); and promotion of the ratification of the United Nations conventions on refugees (Asian-African Legal Consultative Committee).

5. States are encouraged to organize special training in international law for legal professionals, including judges, and personnel of ministries of foreign affairs and other relevant ministries. The United Nations Institute for Training and Research, the United Nations Educational, Scientific and Cultural Organization, the Hague Academy of International Law and regional organizations are invited to cooperate in this respect with States.

6. Cooperation among developing countries, as well as between developed and developing countries, in particular among those persons who are involved in the practice of international law, for exchanging experience and for mutual assistance in the field of international law, including assistance in providing textbooks and manuals of international law, is encouraged.

7. In order to make better known the practice of international law, States, regional and other international organizations should endeavour to publish, if they have not done so, summaries, repertories or yearbooks of their practice.

8. It would be conducive to the teaching and dissemination of international law if all judgments and advisory opinions of the International Court of Justice were available in all official languages of the United Nations. As envisaged in General Assembly resolution 44/28 of 4 December 1989 and bearing in mind the wishes expressed by States, the Sixth Committee will consider, at the forty-sixth session of the Assembly, the Secretary-General's report containing a study of alternative means of making the publications of the International Court of Justice available in all the other official languages in addition to French and English, within the existing overall level of appropriations and in a way which meets the concerns expressed by the Court. Such a study should also consider the possibility, within existing overall level of appropriations, of compiling and publishing thematic and analytical summaries of the judgments and advisory opinions of the International Court of Justice.

9. Other international courts and tribunals, including the European Court of Human Rights and the Inter-American Court of Human Rights, are invited to disseminate more widely their judgements and advisory opinions, and to consider preparing thematic or analytical summaries thereof.

10. International organizations are requested to publish treaties concluded under their auspices, if they have not yet done so. Timely publication of the United Nations *Treaty Series* is encouraged and efforts directed towards adopting an electronic form of publication should be continued. Timely publication of the *United Nations Juridical Yearbook* is also encouraged.

V. PROCEDURES AND ORGANIZATIONAL ASPECTS

1. The Sixth Committee, working primarily through its Working Group and with the assistance of the Secretariat, will be the coordinating body of the programme for the United Nations Decade of International Law. The question of the use of an intra-sessional, inter-sessional or existing body to carry out specific activities of the programme may be considered by the General Assembly.

2. The Sixth Committee is requested to continue to prepare the programme of activities for the Decade.

3. All the organizations and institutions referred to and invited to submit reports to the Secretary-General under sections I to IV above are requested to submit interim or final reports preferably at the forty-sixth session but not later than the forty-seventh session of the General Assembly.

4. States are encouraged to establish, as necessary, national, subregional and regional committees which may assist in the implementation of the programme for the Decade. Non-governmental organizations are encouraged to promote the purposes of the Decade within the fields of their activities, as appropriate.

5. It is recognized that, within the existing overall level of appropriations, adequate financing for the implementation of the programme for the Decade is necessary and should be provided. Voluntary contributions from Governments, international organizations and other sources, including the private sector, would be useful and are strongly encouraged. To this end, the establishment of a trust fund to be administered by the Secretary-General might be considered by the General Assembly.

(e) Consideration of the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier and of the draft optional protocols thereto

By its resolution 45/43 of 28 November 1990,³⁶⁴ adopted on the recommendation of the Sixth Committee,³⁶⁵ the General Assembly expressed its satisfaction at the useful informal consultations that had been held during its forty-fifth session to study the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier and the draft optional protocols thereto,³⁶⁶ as well as the question of how to deal further with those draft instruments with a view to facilitating the reaching of a generally acceptable decision in the latter respect, and took note of the oral report of the Chairman of the Sixth Committee on those consultations;³⁶⁷ and decided that those informal consultations would be resumed at its forty-sixth session.

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

In accordance with General Assembly resolution 44/37 of 4 December 1989, 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 12 February to 2 March 1990.³⁶⁸

With respect to the topic of the maintenance of international peace and security, the Special Committee had before it a revised version of a working paper entitled "Fact-finding by the United Nations to assist in the maintenance of international peace and security" submitted by Belgium, the Federal Republic of Germany, Italy, Japan, New Zealand and Spain at the 1989 session of the Committee³⁶⁹ and a revised version of a working paper entitled "Fact-finding activities by the United Nations in the context of the maintenance of international peace and security" submitted by Czechoslovakia and the German Democratic Republic at the 1989 session of the Committee.³⁷⁰ The working papers were discussed by the Special Committee's Working Group jointly. On the basis of that discussion and further work done by the co-sponsors, a unified document was prepared and presented by the co-sponsors.³⁷¹ The first

12 paragraphs of the document were subject to extensive comments during the informal consultations held by the Chairman, while the rest of the paragraphs benefited from general observations. In the Working Group, the Chairman observed that the document had been generally welcomed and the efforts of the co-sponsors in producing it appreciated.

Dealing with the topic of the peaceful settlement of disputes between States, the Special Committee held a general exchange of views on the question since there were no specific proposals before the Committee on this item of its mandate. Moreover, the Special Committee examined the report of the Secretary-General on the progress of work on the draft handbook on the peaceful settlement of disputes between States.³⁷² The Committee took note of the report.

With regard to the topic of the rationalization of existing procedures of the United Nations, the Special Committee had before it a revised version of a draft document submitted by France and the United Kingdom,³⁷³ a proposal contained in a conference room paper submitted by the Union of Soviet Socialist Republics at its 1989 session and set out in paragraph 101 of that session's report³⁷⁴ and a document submitted by the Chairman following informal consultations.³⁷⁵ As a result of intensive work, the Special Committee completed the draft document on the rationalization of existing United Nations procedures, which it submitted to the General Assembly for consideration and adoption.

The Special Committee had also before it a document entitled "New issues for consideration in the Special Committee", submitted by the Union of Soviet Socialist Republics,³⁷⁶ which was not considered during the session.

At its forty-fifth session, by its resolution 45/44 of 28 November 1990,³⁷⁷ adopted on the recommendation of the Sixth Committee,³⁷⁸ the General Assembly took note of the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization and requested the Special Committee, at its session in 1991:

(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 and, in that context:

(i) to endeavour to complete its consideration of the proposal on fact-finding by the United Nations in the field of the maintenance of international peace and security with a view to submitting its conclusions to the General Assembly at its forty-sixth session;

(ii) to consider the proposals relating to the maintenance of international peace and security that had been submitted to the Special Committee during its session in 1990, as well as those which might be submitted to it at its session in 1991;

(b) to continue its work on the question of the peaceful settlement of disputes between States and, in that context:

(i) to consider proposals relating to that question that might be submitted to the Special Committee;

(ii) to consider the final text of the draft handbook on the peaceful settlement of disputes between States with a view to recommending its publication to the General Assembly at its forty-sixth session. Moreover, by its resolution 45/45 of the same date,³⁷⁹ adopted also on the recommendation of the Sixth Committee,³⁸⁰ the General Assembly approved the conclusions of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization concerning

the rationalization of existing United Nations procedures, as set forth in the annex to the resolution; and decided that those conclusions should be reproduced as an annex to its rules of procedure.

ANNEX

Conclusions of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization concerning the rationalization of existing United Nations procedures

1. Without prejudice to Article 18 of the Charter of the United Nations and with a view to facilitating the work of the United Nations, including, whenever possible, the adoption by the General Assembly of agreed texts of resolutions and decisions, informal consultations should be carried out with the widest possible participation of Member States.

2. When an electronic voting system is available for recording how votes were cast, a roll-call vote should as far as possible not be requested.

3. Before the end of each session of the General Assembly, the General Committee should, in the light of the experience it has acquired during that session, consider drawing up its observations on the organization of the work of the session, with a view to facilitating the organization of the work of future sessions of the Assembly.

4. The agenda of the General Assembly should be simplified by grouping or merging, to the extent possible, related items and, where it is appropriate for discussion of a particular item, by setting an interval of more than a year between the discussions on it. For this purpose, the Chairman of the Main Committee concerned or, as appropriate, the President of the Assembly, should undertake consultations with delegations.

5. The General Committee should consider, at the beginning of each session of the General Assembly, recommending that certain Main Committees should meet in sequential order, taking into account such matters as the number of meetings required for the consideration of the questions with which they are charged at that session, the organization of the work of the whole session and the problem of participation of smaller delegations.

6. In making recommendations as to how agenda items should be allocated to the Main Committees and to the plenary Assembly, the General Committee should ensure the best use of the expertise of the Committees.

7. When the General Assembly considers whether it needs to establish subsidiary organs, in accordance with Article 22 of the Charter, it should give careful consideration as to whether the subject-matter in question could be dealt with by existing organs, including its Main Committees and their working groups. Subsidiary organs should seek constantly to improve their procedures and methods of work in order to ensure effective consideration of questions allocated to them by the Assembly.

8. The dates and length of the sessions of bodies of the General Assembly that meet inter-sessionally should be determined as soon as possible by the Assembly, as appropriate, following advice from the Committee on Conferences, on the proposal of the Secretary-General. The Assembly should take account of the past experience, the state of current work in regard to the mandate given to the body in question and the need to avoid as far as possible overlapping meetings of bodies that deal with subject-matter of a similar nature.

9. Informal consultations about the work of bodies of the General Assembly that meet inter-sessionally should continue to be held in advance of the sessions of such bodies in order to facilitate the conduct of their sessions, especially as regards the composition of the bureau and the organization of work.

10. Resolutions should request observations from States or reports by the Secretary-General in so far as they are likely to facilitate the implementation of the resolutions or the continued examination of the question.

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

By its resolution 45/240 of 21 December 1990,³⁸¹ adopted on the recommendation of the Fifth Committee,³⁸² the General Assembly, recalling Articles 100 and 105 of the Charter of the United Nations, took note with grave concern of the report of the Secretary-General,³⁸³ submitted on behalf of the Administrative Committee on Coordination, and of the developments indicated therein, in particular the significant number of new cases of arrest and detention; called upon all Member States scrupulously to respect the privileges and immunities enjoyed by officials of the United Nations and the specialized agencies and related organizations 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 organizations; urged Member States and others responsible for the illegal detention of United Nations staff members to release them immediately; called upon those Member States holding under arrest or detention officials of the United Nations and the specialized agencies and related organizations to enable the Secretary-General or the executive head of the organization concerned to exercise fully the right of functional protection inherent in the relevant multilateral conventions and bilateral agreements, particularly with respect to immediate access to detained staff members; called upon the staff of the United Nations and the specialized agencies and related organizations to comply fully with the provisions of Article 100 of the Charter and 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; took note with concern of the restrictions on duty travel of officials as indicated in the report of the Secretary-General; urged all Member States that had not yet become parties to the existing international legal instruments covering the question of privileges and immunities of officials, in particular to the Convention on the Privileges and Immunities of the United Nations³⁸⁴ and the Convention on the Privileges and Immunities of the Specialized Agencies,³⁸⁵ to do so promptly; welcomed the advisory opinion of 15 December 1989 of the International Court of Justice on the applicability of article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations³⁸⁶ that that section was applicable to persons other than United Nations officials to whom a mission had been entrusted by the Organization and who were therefore entitled to enjoy the privileges and immunities provided for in that section with a view to the independent exercise of their function; and requested the Secretary-General, as Chairman of the Administrative Committee on Coordination, to review and appraise the measures already taken to enhance the proper functioning, safety and protection of international civil servants.

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

By its resolution 45/4 of 16 October 1990,³⁸⁷ the General Assembly noted with appreciation the continuing efforts of the Asian-African Legal Consultative 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 Consultative Committee; noted with satisfaction the commendable progress achieved towards enhancing cooperation between the United Nations and the Consultative Committee in wider areas; and noted with appreciation the decision of the Consultative Committee to participate actively in the programmes of the United Nations Decade of International Law.

11. UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH³⁸⁸

UNITAR's training programme included courses in multilateral diplomacy, international law and international cooperation for members of permanent missions to the United Nations in New York and at Geneva as well as workshops on international legal instruments and the structure, retrieval and use of United Nations documentation as well as a hi-tech symposium on computer-communication systems in the 1990s.

UNITAR also continued to organize at The Hague the joint United Nations/UNITAR international law fellowship programme for government legal advisers from developing countries, in conjunction with the summer session of the Hague Academy of International Law, as well as the international law seminar at Geneva.

Under UNITAR's research programme several publications on the United Nations and on multilateral diplomacy and international cooperation were issued. They include: *International Administration: Law and management practices in international organizations*; Sidney Dell, *The United Nations and International Business*; Shabtai Rosenne and Terry D. Gill, *The World Court: What It Is and How It Works*; *The United Nations System at Geneva — Scope and Practices of Multilateral Diplomacy and Cooperation*.

At its forty-fifth session, the General Assembly, by its resolution 45/219 of 21 December 1990,³⁸⁹ adopted on the recommendation of the Second Committee,³⁹⁰ took note of the report of the Secretary-General prepared pursuant to General Assembly resolution 44/175³⁹¹ and the report of the Executive Director of the United Nations Institute for Training and Research; and requested the Secretary-General to appoint an appropriately qualified high-level independent consultant who would submit a report directly to the Secretary-General containing, *inter alia*, recommendations on the continued relevance of the mandate of the Institute, taking into account the relevant resolutions of the General Assembly and other research and training activities of the United Nations system, a review and assessment of all aspects of the current activities of the Institute and their benefits to the United Nations and its Member States, *inter alia*, in the fields of the maintenance of peace and security and the promotion of economic and social development, and an assessment of whether those activities could be more effectively carried out by the Institute or by other bodies in the United Nations system; as well as on the feasibility of utilizing the facilities of the Institute for the training of personnel for peace-keeping operations.

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

1. INTERNATIONAL LABOUR ORGANISATION³⁹²

The International Labour Conference (ILC), which held its 77th session at Geneva in June 1990, adopted certain amendments to its Standing Orders:³⁹³

(a) Amendments to article 2, paragraph 3 (j) (Right of admission to sittings of the Conference);

(b) A new paragraph 4 to article 2 (Right of admission to sittings of the Conference);

(c) Amendments to article 19, paragraph 7 (Methods of voting (in the Plenary));

(d) A new paragraph 14 to article 19 (Methods of voting (in the Plenary));

(e) A new paragraph 11 to article 65 (Methods of voting (in the Conference Committees));

(f) A new section J (Suspension of a provision of the Standing Orders), article 76, to part II (Standing Orders concerning special subjects).

The International Labour Conference at the same session adopted the following instruments: a Convention concerning Safety in the Use of Chemicals at Work³⁹⁴ and a Recommendation supplementing it,³⁹⁵ a Convention concerning Night Work³⁹⁶ and a Recommendation supplementing it,³⁹⁷ and the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948.³⁹⁸

The Committee of Experts on the Application of Conventions and Recommendations met at Geneva from 8 to 21 March 1990 and presented its report.³⁹⁹

The Governing Body Committee on Freedom of Association met at Geneva and approved reports Nos. 270⁴⁰⁰ and 271⁴⁰⁰ at its 245th session (February-March 1990); reports Nos. 272,⁴⁰¹ 273,⁴⁰¹ and 274⁴⁰¹ at its 246th session (May-June 1990); and reports Nos. 275⁴⁰² and 276⁴⁰² at its 248th session (November 1990).

2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

(a) Constitutional and general legal matters

(i) *Draft headquarters Agreement for the World Food Programme*

At its fifty-fourth session, the Committee on Constitutional and Legal Matters (CCLM) reviewed the Draft headquarters Agreement for the World Food Programme (WFP), a joint programme of FAO and the United Nations. In particular, CCLM examined certain amendments proposed by the Government of Italy relating to the inviolability and protection of the headquarters, the immunity of the officials of the Programme and certain restrictions of enjoyment of privileges and immunities.

CCLM concluded that the draft WFP headquarters Agreement would have a substantial impact on the relationship between WFP, on the one hand, and FAO and the

United Nations on the other. In consequence thereof, it recommended that the question of the desirability of such a change be passed upon the Governing Bodies of WFP.

(ii) *FAO headquarters Agreement*

The main headquarters seat put at the disposal of FAO by the Government of Italy not being spacious enough to accommodate all headquarters staff, FAO had been renting for some years further office space. In this respect, the Government of Italy accorded to FAO a special contribution towards meeting the rental expenses incurred by FAO in connection therewith.

An exchange of letters between the Permanent Representative of Italy to FAO and the Director-General took place on 16 October 1990 to give a proper legal basis to this arrangement. It was agreed that certain premises rented by FAO for the purpose of accommodating its headquarters staff would be included in the definition of the headquarters Seat in the headquarters Agreement and that the entire rental would be paid by the Italian Government in fulfilment of its obligations with respect to the provision of headquarters premises.

(iii) *Form of membership for regional economic integration organizations in FAO*

Further to the discussions held by the Director-General with the Commission of the European Economic Community (EEC) and to the report of CCLM, the Council considered, during its ninety-eighth session, the options for a form of membership for regional economic integration organizations.

The Council underlined that any solution adopted would have to be applicable to any regional economic integration organization to which competence had been transferred by its member States in fields of activity of FAO even though, at this stage, it appeared that EEC was the only regional economic integration organization meeting such criteria.

The Council noted the letter received from the President of the Council of the European Communities whereby the said Council requested that the Constitution of FAO be amended to enable the European Communities to accede to FAO on the basis of a member status commensurate with its powers.

In that respect, it was recognized that a number of problems would require further study and reflection, and in particular, the exercise of membership rights by regional economic integration organizations. The Council noted that the discussions between FAO and EEC had been based on the criterion of the alternative nature of the exercise of membership rights, which implies that either the regional economic integration organization or its member States, but not both, would exercise the rights, depending on which had competence in the matter concerned. The Council also recognized that the application of such criterion called for a solution to be agreed upon with respect to certain practical matters such as the modalities for the exercise of the right to speak and to vote in the context of various degrees of transfer of competence between a regional economic integration organization and its member States. It stressed that the number of votes of a regional economic integration organization should not exceed the number of votes of its member States.

There was general agreement in the Council that the membership status of regional economic integration organizations should be *sui generis* and that there would need to be a clear and precise legal definition of the attributes of such membership and a description of the modalities of their exercise.

The Council also underlined the need for a very precise and complete definition of the competence of regional economic integration organizations. A statement of competence listing the areas of competence transferred by, or shared with, their member States would need to be drawn and some mechanisms would need to be set up to allow FAO's member nations to identify at any time whether the competence on any matter lay with the regional economic integration organization or with its member States.

The Council also reviewed the desirability of amending article XIV of the FAO Constitution to allow participation by regional economic integration organizations in agreements concluded thereunder. In view of the problems which have arisen in the past in that respect, the Council concluded that this issue could be considered by the Conference at its session in November 1991.

Finally, the Council requested the Director-General to hold further talks with EEC and that the secretariat prepare detailed documentation on the issues discussed during its ninety-eighth session, including drafts of possible amendments to the Basic Texts of the organization. It also requested that the matter be considered by CCLM at its fifty-sixth session and that CCLM report thereon to the Council at its session in June 1991. The Council requested, in addition, that the Finance Committee be kept fully informed.

(iv) *Change in status of member nations*

The Council was informed that formal notice of the merger of the Yemen Arab Republic and the People's Democratic Republic of Yemen, both members nations of FAO, had been received on 10 October 1990.

It was also informed of the notification received by the organization on 3 October 1990 that on the same day the German Democratic Republic had acceded to the Federal Republic of Germany.

The Council noted that matters relating to membership in the organization and assessment of contributions to the budget of the organization were matters within the purview of the Conference. It also noted that the question concerning the reassessment of the scale of contributions and in particular the retroactive effect of these changes of status on contributions, if any, might need to be referred to CCLM before being submitted for decision to the Conference.

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

The coming into force of the Agreement establishing the Common Fund for Commodities, on 19 June 1989, could provide a new and important role for the Intergovernmental Groups on Commodities of FAO if, as seems probable, a number of them are designated as the eligible International Commodity Bodies to identify, sponsor and monitor research, development and promotion projects for financing from the Second Account from the Common Fund.

Following upon the requests of individual Groups, endorsed by the Committee on Commodity Problems, the Council and the Conference of FAO, the Director-General requested in the course of 1990 the designation of the Intergovernmental Groups on Hard Fibres, Bananas, Rice, Meat, Oilseeds, Oils and Fats, Tea and Citrus Fruit, the Subgroup on Hides and Skins and the Subcommittee on Fish Trade as eligible International Commodity Bodies under the Agreement.

(c) Activities of legal interest relating to fisheries

Regulatory measures recommended by FAO Regional Fishery Bodies

a. *Indian Ocean Fishery Commission (IOFC)*

At its eleventh session, held at Bangkok from 9 to 12 July 1990, the Committee for the Management of Indian Ocean Tuna considered the recommendations embodied in resolution 44/225 of the General Assembly of the United Nations on large-scale pelagic driftnet fishing and its impact on the living resources of the world's oceans and seas. It recommended a moratorium on all large-scale pelagic driftnet fishing on the high seas of the Indian Ocean by June 1992, with the understanding that such measures be taken (based upon statistically sound analysis to be jointly made by the concerned parties of the Indian Ocean) to prevent unacceptable impacts of such fishing practices in the Indian Ocean and to ensure the conservation of the living resources of the Indian Ocean. Among the possible measures to be taken urgently, the Committee recommended that observers be placed on board vessels using large pelagic driftnets on the high seas of the Indian Ocean.

b. *Western Central Atlantic Fisheries Commission (WECAFC)*

At its seventh session, held at Kingston, Saint Vincent and the Grenadines, from 8 to 14 November 1990, WECAFC recommended, in accordance with resolution 44/225 of the General Assembly of the United Nations, the imposition of a moratorium on large-scale pelagic driftnet fishing on the high seas of the whole area of competence of the Commission by 30 June 1992. In doing so, the Commission noted that no effective conservation and management measures were known which could control this fishery and recommended that the statistical analysis mentioned in the United Nations resolution be carried out rapidly in order to determine the management and conservation measures required for the utilization of some of these gears. The Commission also specifically recommended that, in accordance with the United Nations resolution, large-scale pelagic driftnets should not be redeployed in the region.

(d) Legislative matters

(i) *Activities connected with international meetings*

FAO participated in and provided contributions to the following international meetings:

Meeting of Legal and Technical Experts to Review the Proposed Legal Framework of the Action Plan for the South Asian Seas Region, UNEP, Bangkok, 5-9 February 1990;

Meeting of Legal and Technical Experts to Review the Proposed Legal Framework of the Action Plan for the East Asian Seas Region, UNEP, Bangkok, 12-16 February 1990;

Regional Workshop on Harmonization of Pesticides Registration Requirements, FAO-Japan, Beijing, 14-18 May 1990;

"Pesticides en Afrique = donateurs et industries", SPV (Service protection des végétaux), Montpellier, France, 3-5 April 1990;

Meeting on policy on access to exclusive economic zones of Caribbean Community (CARICOM) Member States, May 1990;

Meeting of the Follow-up Committee of the Ministerial Conference on Fisheries Cooperation among African Atlantic Coastal States, 29-31 May 1990;

Biotechnology Law forum, University of Perugia, Perugia, Italy, 31 May-1 June 1990;

Réunion internationale d'experts en droit de l'environnement, Institut des hautes études internationales, Paris, 5-6 June 1990;

Regional Seminar on Water Legislation and Administration, organized by FAO with the sponsorship of the Organisation of Eastern Caribbean States (OECS), St. Lucia, 11-13 June 1990;

Séminaire sur l'harmonisation des législations phytosanitaires des Etats membres de la Commission du Pacifique-Sud — SPV (Service protection des végétaux), Montpellier, France, 9-12 July 1990;

Expert Consultation on Plant Quarantine Harmonization, Asian and Pacific Plant Protection Commission, Bangkok, 30 July-5 August 1990;

7th International Congress of Pesticide Chemistry, International Union of Pure and Applied Chemistry, Hamburg, Germany, 5-10 August 1990;

Regional Seminar on Food Safety Legislation, WHO, Kuala Lumpur, 27-30 August 1990;

Ad hoc Working Group of Government Representatives to Prepare for Negotiations on a Framework Convention on Climate Change, Geneva, 24-26 September 1990;

Consultation of the FAO/WHO Working Group on Legal Aspects of Water Supply and Wastewater Management, Geneva, 25-27 September 1990;

Meeting to Draft a Ministerial Declaration for the Second World Climate Conference, 27-29 September 1990;

Cours de pratique de droit du développement, Institut international du développement, Rome, 1-2 October 1990;

VIII^e Congrès international du droit de l'alimentation, Association européenne du droit de l'alimentation (AEDA), Luxembourg, 10-12 October 1990;

Preparatory Meeting of Experts on Soviet Land Law, FAO, Rome, 22-23 October 1990;

Réunion mondiale des associations de droit de l'environnement, Centre international de droit comparé de l'environnement, Limoges, 13-15 November 1990.

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

During 1990, legislative assistance and advice were given to various countries on the following topics:

a. *Agrarian law*

Burkina Faso (range management), Central African Republic (soil conservation), Congo (agrarian and rural land law), Djibouti (agrarian and rural land law), Ethiopia (land use planning), Guinea (agrarian and rural land law), Mali (rural land law), Morocco (protection of agricultural land), Niger (rural land law), Rwanda (rural land law), Togo (agrarian and rural land law).

b. *Water legislation*

Burundi, Chile, Guinea, Indonesia, Zanzibar (water users' associations).

c. *Animal health and production legislation*

Rwanda, Burkina Faso.

d. *Plant protection legislation*

Burundi, Mali, Mauritania, Rwanda, Syrian Arab Republic, Uganda.

e. *Plant production and seed legislation*

Indonesia (seed), India (plant breeders' rights), Pakistan (cotton standards).

f. *Pesticide legislation*

Burundi, Mali, Mauritania, Rwanda, Pakistan.

g. *Food legislation*

Guinea-Bissau.

h. *Fisheries legislation*

Angola, Burundi, Cape Verde, CARICOM, Gambia, Guinea-Bissau, Malta, Madagascar, Mauritania, Myanmar, Namibia, Rwanda, Somalia, Sao Tome and Principe, Suriname, Viet Nam, West Africa (Senegal, Mauritania, Guinea, Guinea-Bissau: monitoring, control and surveillance).

i. *Forestry and wildlife legislation*

Bhutan (forestry), Cape Verde (forestry), Malawi (forestry), Malaysia (forestry), Mauritania (wildlife), Mauritius (wildlife), Myanmar (forestry), Saint Vincent and the Grenadines (forestry and wildlife), Samoa (watershed), Sierra Leone (forestry), Somalia (wildlife), Uganda (wildlife), Viet Nam (forestry).

j. *Environment legislation*

Guinea.

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

Advice or documentation was furnished to Governments, agencies or educational centres, at their request, on a range of topics including:

Agrarian and rural land law (Bolivia, Cape Verde, Guinea-Bissau, Mali, Madagascar, Sao Tome and Principe, Senegal, Uganda).

Animal, plant and food legislation (Myanmar, Mali, Tunisia).

Forestry and wildlife legislation (Brazil, Guinea-Bissau, Honduras, Mozambique, Peru, United Republic of Tanzania).

Environmental legislation (Turkey, Zambia).

(iv) *Legislative research and publications*

Research was conducted, *inter alia*, on:

Regulation of driftnet fishing on the high seas;

Activities conducted by FAO in the field of international environmental law;

Pesticide registration procedures;
European Economic Community food law;
Comparative law of irrigated areas.

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

In 1990, FAO published the annual *Food and Agricultural Legislation*.

Annotated lists of relevant laws and regulations relating to food legislation were also published in the semi-annual *Food and Nutrition Review*.

3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

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 2 to 4 May 1990 and from 2 to 4 October 1990, in order to examine communications which had been transmitted to it in accordance with decision 104 EX/3.3 of the Executive Board.

At its spring session, the Committee examined 32 communications, of which 21 were examined with a view towards their admissibility and 11 were examined on their substance. Of the 21 communications examined as to admissibility, none was declared admissible, none was declared irreceivable and seven were struck from the list since they were considered as having been settled. The examination of 14 communications was suspended. The Committee presented its report to the Executive Board at its 134th session.

At its fall session, the Committee had before it 25 communications, of which 19 were examined as to their admissibility and six were examined on their substance. Of the 19 communications examined as to their admissibility, six were declared admissible, one was declared irreceivable and two 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 16 communications was suspended. The Committee presented its report on its examination of these communications to the Executive Board at its 135th session.

4. INTERNATIONAL CIVIL AVIATION ORGANIZATION

(a) Legal meetings

A session of the Special Subcommittee of the Legal Committee was held at Montreal from 9 to 19 January to study the subject of a draft instrument relating to the marking of explosives for detectability, and to prepare a draft instrument for further consideration by the 27th Session of the Legal Committee. This subject had been

included by the Council, on 29 June 1989, in the general work programme of the Legal Committee as the subject of its highest priority; this action was endorsed by the 27th session of the Assembly in resolution A27-8.

As a result of its deliberations, the Legal Subcommittee prepared a draft text and indicated that the subject was ripe for consideration by the 27th session of the Legal Committee, and on 25 January the Council noted the report of the Legal Subcommittee.

The 27th session of the Legal Committee was held at Montreal from 27 March to 12 April. In accordance with the directives issued by the Council, the main agenda item of the session was the subject "Development of an instrument relating to the marking of explosives for detectability".

The Legal Committee studied the subject on the basis of the report of the Legal Subcommittee, and as a result of its discussions and deliberations prepared the text of a draft Convention on the marking of plastic and sheet explosives for the purpose of detection. The Legal Committee considered that the text was ready for presentation to States as a final draft under the terms of Assembly resolution A7-6 and presented it to the Council for consideration and action under the terms of that resolution.

On 14 June and 4 July, the Council noted the report of the Legal Committee and requested the Secretary General to circulate the draft prepared by the Legal Committee, together with the report thereon, as well as a draft technical annex prepared by an Ad Hoc Group of Specialists, to States and certain international organizations for comments.

The Council decided, on 4 July, to convene at Montreal from 12 February to 1 March 1991 an International Conference on Air Law to consider, with a view to approving, the texts for inclusion in a Convention on the marking of plastic [and sheet] explosives for the purpose of detection as prepared by the 27th session of the Legal Committee.

(b) Work programme of the Legal Committee of ICAO

The 27th session of the Legal Committee held in March-April reviewed its general work programme as approved by the Council at the fourth meeting of its 128th session on 15 November 1989. The Committee decided that the item "Preparation of a new legal instrument regarding the marking of explosives for detectability" should be removed from the general work programme since the Legal Committee had completed its work on the subject. Consequently the Committee established, subject to the approval of the Council, the following general work programme, in that order of priority:

- (1) Action to expedite ratification of Montreal Protocols Nos. 3 and 4 of the "Warsaw System";
- (2) Legal aspects of global air-ground communications;
- (3) Institutional and legal aspects of future air navigation systems;
- (4) 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;
- (5) Liability of air traffic control agencies;
- (6) Study of the instruments of the "Warsaw System".

At the sixth meeting of its 131st session, the Council approved the general work programme of the Legal Committee as set out above.

(c) Resolutions adopted by the 28th session (Extraordinary) of the ICAO Assembly which are of legal significance

(i) *Resolution A28-1: Amendment to article 50(a) of the Convention on International Civil Aviation*

By resolution A28-1, the Assembly, which was held from 22 to 26 October 1990, adopted at Montreal on 26 October 1990 the “Protocol relating to an amendment to article 50(a) of the Convention on International Civil Aviation”. The Protocol, which increases the membership of the ICAO Council from 33 to 36, shall come into force in respect of the States which have ratified it on the date on which the 108th instrument of ratification is deposited.

(ii) *Resolution A28-2: Ratification of the Protocol amending article 50(a) of the Convention on International Civil Aviation*

This resolution recommends to all Contracting States that they ratify urgently this amendment to the Convention.

(iii) *Resolution A28-3: Possible operating restrictions on subsonic jet aircraft which exceed the noise levels in volume I, chapter 3, of annex 16*

States are urged in Resolving Clause 1 of this resolution not to introduce any new operating restrictions on aircraft which exceed the noise levels specified in volume 1, chapter 3, of annex 16 (chapter 3 aircraft) to the Convention on International Civil Aviation before considering a number of factors listed therein. States which decide to introduce restrictions on the operations of aircraft which comply with the noise certification standards in volume 1, chapter 2, of annex 16 (chapter 2 aircraft) but which exceed the noise levels in volume 1, chapter 3, of annex 16 are urged not to begin a phase-in period for any restrictions on such chapter 2 aircraft prior to 1 April 1995, and to allow any chapter 2 aircraft presently operating to their territories to be withdrawn gradually over a period of not less than seven years, making the earliest end of the phase-in period 1 April 2002. The resolution also urged States not to restrict, prior to 1 April 1995, the operations of any aircraft less than 25 years after the date of its first individual certificate of airworthiness, or of any presently existing wide-body aircraft or any aircraft fitted with high by-pass ratio engines. Furthermore, the States imposing operating restrictions are strongly encouraged to take into account the problems of operators in developing countries where they are unable to replace chapter 2 aircraft before the end of the phase-in period, provided there is proof of a purchase order or leasing contract for a replacement chapter 3 aircraft and the first date of delivery of the aircraft has been accepted. States are further urged, if and when any new noise certification standards are introduced which are more stringent than those in volume 1, chapter 3, of annex 16, not to impose any operating restrictions on chapter 3 compliant aircraft.

Resolution A28-3 supersedes resolution A26-11 and, in respect of noise aspects, resolution A23-10.

(iv) *Resolution A28-7: Aeronautical consequences of the Iraqi invasion of Kuwait*

This resolution condemns the violation of the sovereignty of the airspace of Kuwait and the plunder of Kuwait International Airport by Iraqi armed forces, including the seizure and removal to Iraq of 15 aircraft of Kuwait Airways and their purported registration by Iraq. Iraq is called upon to facilitate the early recovery by their owners of foreign registered aircraft stranded at Kuwait International Airport. The resolution further “declares that the unilateral registration of aircraft of Kuwait Airways as Iraqi aircraft is null and void and calls upon the Iraqi Government to return the Kuwaiti aircraft to the legitimate Government of Kuwait.” All States in whose territory any of these aircraft are found are requested to hand them over to the legitimate Government of Kuwait. States are also requested not to supply Iraq, its companies or nationals, whether directly or indirectly, with any spare parts, equipment or supplies or services to enable Iraq to use the aircraft.

(d) Privileges, immunities and facilities

On 15 June 1990, during its 130th session, the Council approved the text of a new revised headquarters Agreement between ICAO and the Government of Canada and authorized the President of the Council to sign it on behalf of the Organization. The Agreement, which was signed at Montreal on 9 October by the President of the Council, follows closely the relevant provisions of the Vienna Convention on Diplomatic Relations, to which Canada is a party, and of the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947. The Agreement will be submitted to the Canadian Parliament for legislative implementation and thereafter it will enter into force with an exchange of notes between the President of the Council and the Government of Canada.

5. WORLD HEALTH ORGANIZATION

(a) Constitutional and legal development

During 1990, Namibia (formerly an associate member of WHO) and Belize became members of WHO, as of 23 April and 23 August 1990 respectively, by deposit of an instrument of acceptance of the Constitution, as provided for in articles 4 and 79 (b) of the Constitution. On 23 May the Yemen Arab Republic and the People's Democratic Republic of Yemen merged into a single member under the name of Yemen. On 3 October the Federal Republic of Germany and the German Democratic Republic were united and formed a single member under the designation of Germany. The number of members at the end of 1990 thus remained at 166.

The amendments to articles 24 and 25 of the Constitution, adopted in 1986 by the Thirty-ninth World Health Assembly to increase the membership of the Executive Board from 31 to 32, had been accepted by 66 member States on 31 December 1990.

(b) Health legislation

WHO's Health Legislation Programme continued to focus on two primary functions, the first being direct technical cooperation with member States seeking to review and/or update their laws and regulations in the health and environmental sec-

tors; for example, WHO supported national workshops in health legislation in China and Viet Nam, while consultant missions were undertaken in six countries. The second function is to promote the international transfer and exchange of information in health legislation (an activity which WHO inherited from the Paris-based International Office of Public Hygiene). The cornerstone of this "clearinghouse" function remained the quarterly journal, the *International Digest of Health Legislation* (and its French-language counterpart, the *Recueil international de Législation sanitaire*). Regional health legislation information systems were operated by WHO's Regional Offices for the Americas (in Washington) and Europe (in Copenhagen).

The Programme retained its strong interest in HIV/AIDS legislation, and regional workshops on the legal and ethical aspects of HIV infection and AIDS were held at Brazzaville, Santiago de Chile, and Seoul. WHO was also represented at several national and international conferences on health/medical law and cognate areas, including the Council of Europe's XXth Colloquy on European Law devoted to the topic "Law and Moral Dilemmas Affecting Life and Death" (Glasgow, 10-12 September 1990). WHO staff also attended, and delivered papers at, major meetings on the legal and ethical aspects of organ transplantation.

In the course of 1990, WHO convened two Informal Consultations on Organ Transplantation, their objective being to provide guidance to the Director-General in the implementation of the two resolutions on the subject that had been adopted by the World Health Assembly in 1987 (WHA40.13, on "Development of guiding principles for human organ transplants") and 1989 (WHA42.5, on "Preventing the purchase and sale of human organs"). The reports of these consultations⁴⁰³ were widely distributed.

6. WORLD BANK

(a) IBRD, IFC, IDA — membership

During 1990, Bulgaria, Czechoslovakia and Namibia became members of the International Bank for Reconstruction and Development (the Bank), Algeria, Cape Verde, Czechoslovakia, Namibia and Romania became members of the International Finance Corporation (the Corporation or IFC) and Czechoslovakia became a member of the International Development Association (the Association or IDA). At the end of the year, membership in these organizations stood at 154, 139 and 138, respectively.

In May and June 1990, the Bank Group organizations received letters from the Minister for Foreign Affairs of the Republic of Yemen notifying them that by virtue of the merger of the Yemen Arab Republic and the People's Democratic Republic of Yemen on 22 May 1990 the Republic of Yemen was a single member of the Bank, the Association and the Corporation with a single subscription and subject to the provisions of the respective Articles of Agreement. At the time, both the Yemen Arab Republic and the People's Democratic Republic of Yemen were members of the Bank and IDA, but only the Yemen Arab Republic was a member of IFC. On 13 July 1990 the Executive Directors of the Bank and IDA and the Board of Directors of the Corporation took note of the communications of the Republic of Yemen and decided to substitute the Republic of Yemen to the Yemen Arab Republic and the People's Democratic Republic of Yemen as being a single member subject to the Articles of Agree-

ment, and to make the necessary adjustments in the member's capital subscription and voting power.

On 3 October 1990 the Bank received a communication from the Executive Director of the Bank appointed by Germany, stating that "through the accession of the German Democratic Republic to the Federal Republic of Germany with effect from 3 October 1990, the two German States have united to form one sovereign State, which as a single member of the [. . .] Bank remains bound by the provisions of the Articles of Agreement of the [. . .] Bank." Similar communications were received by IFC, IDA, the Multilateral Investment Guarantee Agency (MIGA) and ICSID. At the time, only the Federal Republic of Germany was a member of the World Bank Group organizations. The Bank and its affiliates noted the change and noted that as a result of unification, suppliers and contractors from all parts of Germany had become eligible for financing under Bank and IDA loans and credits as of 3 October 1990.

(b) Multilateral Investment Guarantee Agency

(i) *Membership*

During 1990, Botswana, Czechoslovakia, Fiji, Malta, Mauritius, Namibia, Poland, Saint Vincent and Swaziland became members of MIGA. By the end of 1990, the MIGA Convention had been signed by 83 countries. Fifty-nine of these had also ratified the Convention, and of these, 55 countries had fulfilled all membership requirements and were members of MIGA.

(ii) *Guarantee operations*

As of 31 December 1990 MIGA had received a total of 321 applications for guarantee, submitted by investors from 18 member States with respect to projects in 48 developing member countries. As of the same date, MIGA had executed four contracts of guarantee representing, in the aggregate, \$US \$132.3 million of coverage. These contracts were issued to investors in two member countries for investments in three host countries. The projects involve mining, manufacturing and agribusiness.

(iii) *Agreements with member States*

Pursuant to article 23 (b) 9 (ii) of the Convention, MIGA endeavours to conclude bilateral investment protection agreements with member States. Such agreements are designed to ensure that MIGA, with respect to investments guaranteed by it, has treatment at least as favourable as that agreed by the member concerned for the most favoured guarantee agency or State in an agreement relating to investment. During 1990, MIGA entered into such agreements with Bangladesh, Ghana, Hungary and Poland.

Pursuant to article 18 (c), MIGA also negotiates agreements on the use of local currency which are designed to enable MIGA to dispose freely of local currency acquired by it in conjunction with a claim resulting from an inconvertibility loss. During 1990, MIGA entered into such agreements with Bangladesh, Chile, Ecuador, Egypt, Ghana, Hungary, Poland and Turkey.

Under article 15 of the Convention, MIGA must obtain the approval of the host country before issuing a guarantee. In order to expedite this process, MIGA negotiates with its member States arrangements which provide a degree of automaticity to the host country approval. During 1990, guidelines for approval of MIGA guarantees

were concluded with Angola, Bangladesh, Burkina, Faso, Congo, Ecuador, Egypt, Ghana, Mali, Poland, Turkey and Zaire.

(c) International Centre for Settlement of Investment Disputes

(i) *Signatures and ratifications*

During 1990, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention)⁴⁰⁴ was signed by China and ratified by Tonga, bringing the number of the signatory States and Contracting States to 99 and 92 respectively.

(ii) *Disputes before the Centre*

In June 1990, awards were rendered in two cases, *Amco Asia Corporation et al. v. Republic of Indonesia* (Case ARB/81/1) and *Asian Agricultural Products Ltd. v. Democratic Socialist Republic of Sri Lanka* (Case ARB/87/3).

Also in June 1990, the Ad Hoc Committee constituted under article 52 of the ICSID Convention to consider applications to annul the second award made in *Klöckner Industrie-Anlagen GmbH et al. v. Republic of Cameroon and Société camerounaise des engrais S.A.* (Case ARB/81/2) rendered its decision rejecting the annulment applications in their entirety.

On 18 October 1990, the Secretary-General of the Centre registered applications to annul the above-mentioned award in the *Amco Asia* case, the second award to have been rendered in that case.

During November 1990, the proceedings were discontinued in three further arbitration cases following amicable settlements by the parties of the disputes concerned. The discontinued cases were *Colt Industries Operating Corp., Firearms Division v. Government of the Republic of Korea* (Case ARB/84/2); *Maritime International Nominees Establishment v. Republic of Guinea* (Case ARB/84/4), a case that had been resubmitted to ICSID arbitration following the partial annulment of a first award; and *Mobil Oil New Zealand Ltd., Mobil Oil Corporation and Mobil Petroleum Company, Inc. v. New Zealand Government* (Case ARB/87/2). These discontinuances brought to 14 the number of ICSID cases to have been amicably settled, as compared to only eight that have ended with final awards.

As of 31 December 1990, the following four cases were pending before the Centre:

- (i) *Amco Asia et al. v. Republic of Indonesia* (Case ARB/81/1) (Annulment);
- (ii) *SPP (ME) v. Arab Republic of Egypt* (Case ARB/84/3);
- (iii) *Société d'études de travaux et de gestion S.A. — SETIMEG v. Republic of Gabon* (Case ARB/87/1);
- (iv) *Manufacturers Hanover Trust Company v. Arab Republic of Egypt and the General Authority for Investment and the Free Zones* (Case ARB/89/1).

7. INTERNATIONAL MONETARY FUND

MEMBERSHIP

During 1990, three countries became members of the Fund: the Czech and Slovak Federal Republic, on 20 September 1990, with a quota of SDR 590 million; Bulgaria, on 25 September 1990, with a quota of SDR 310 million; and Namibia, on 25 September 1990, with a quota of SDR 70 million. Following the merger of the Yemen Arab Republic and the People's Democratic Republic of Yemen, the Fund's Executive Board decided, in June 1990, that the Republic of Yemen is a single member of the Fund with a quota of SDR 120.5 million.

During the course of 1990, the Fund received membership applications from Mongolia and Switzerland.

PROPOSED THIRD AMENDMENT TO THE FUND'S ARTICLES OF AGREEMENT

Pursuant to a resolution adopted on 28 June 1990, the Board of Governors approved the text of an amendment of the Fund's Articles of Agreement which, once effective, would provide for the suspension of voting and related rights of members that do not fulfil their obligations under the Articles of Agreement. The proposed amendment is designed to strengthen the Fund's ability to deal with members with overdue financial obligations to the Fund that persist in not cooperating with the Fund in the elimination of these arrears. Activation of the provision for suspension in an individual case would require a 70 per cent majority of the total voting power in the Fund's Executive Board.

In order for the proposed amendment to become effective, it will have to be accepted by three fifths of the Fund's members, having 85 per cent of the total voting power.

NINTH GENERAL REVIEW OF QUOTAS

On 28 June 1990, the Board of Governors of the Fund authorized an increase in the total of the Fund quotas from SDR 90.1 billion to SDR 135.2 billion. The Board of Governors' resolution specifies that the proposed quota increase will not take effect until the proposed Third Amendment of the Articles becomes effective. Moreover, during the period ending 30 December 1991, no increase in quota may take effect until the Fund determines that members having no less than 85 per cent of the total quotas as of 30 May 1990 have consented to the increases which have been proposed for them in the resolution. After 30 December 1991, however, the quota increase may take effect once members having not less than 70 per cent of the total of quotas on 30 May 1990 consent to their proposed increase. Members with overdue obligations to the General Resources Account may not consent to the proposed increase until they become current in these obligations.

THE FUND'S RESPONSES TO THE MIDDLE EAST CRISIS

The Fund responded to the Middle East crisis by adapting its existing instruments and introducing new forms of temporary financing designed to assist, in particular, those countries most directly affected. In doing so, the Fund had three specific goals: to increase, where appropriate, financing to members with Fund arrangements already in force; to modify and expand support provided by the Fund's Compensatory and Contingency Financing Facility (CCFF), notably with temporary financing to help offset the higher cost of oil and gas imports; and to encourage members to formulate

suitable contingency plans against future external economic shocks. The specific actions taken by the Fund to achieve these goals were as follows:

1. Decided to rephase or accelerate disbursement of funds to members under stand-by arrangements or arrangements under the Fund's Extended Fund Facility (EFF), the Structural Adjustment Facility (SAF) or Enhanced Structural Adjustment Facility (ESAF).

2. Relaxed certain limits on access to Fund financing. Limits on Fund financing available to a member are expressed in terms of a percentage of a member's quota in the Fund. Through 31 December 1991, the access limits are up to 110 per cent a year, 330 per cent over three years; and cumulative access of 440 per cent of quota, net of scheduled repurchases.

3. Increased flexibility regarding the availability of low-cost credit extended to poorer countries adopting comprehensive policy reforms under the ESAF. The amounts committed under ESAF arrangements may now be increased not only at the time of approval of an annual arrangement but also at the time of a mid-term review. Moreover, an additional fourth-year arrangement may be granted if the Fund is satisfied that the performance of the member under the arrangement has been satisfactory and that the member has adopted appropriately strong measures to improve its balance-of-payments position.

4. Broadened coverage of services (non-goods trade) eligible for compensatory financing under the CCF. Previously, the Fund compensated for shortfalls in earnings from exports of goods and two categories of services — workers' remittances and receipts from tourism. The amendment of the provisions extends eligibility for such financial compensation to practically all services such as receipts from pipelines, canals, shipping, transportation, construction and insurance. The new policy also permits quicker access to compensatory credit in the wake of a steep fall in export receipts, by permitting the member to use a greater amount of estimated, rather than actual, data to calculate the shortfall.

5. Introduced a new but temporary oil element of the CCF. This element compensates members until the end of 1991 for excess costs of their imports of crude petroleum, petroleum products and natural gas. As with other compensatory elements of the CCF (those financing shortfalls in export earnings and increases in the cost of cereal imports), the excess in the cost of oil imports must be temporary and largely beyond the member country's control.

6. Added flexibility in obtaining contingency financing in the framework of Fund arrangements for members adopting corrective policies. This is accomplished by facilitating the attachment of a contingency mechanism to Fund arrangements at the time of a review, provided it is done at least six months prior to their expiration. Such contingency funds would become available if an unexpected shock threatened to undermine the reform effort.

The oil element of the CCF and the relaxation of access limits will remain in force only until the end of 1991. The remaining policy changes will continue and will be re-evaluated as part of the Executive Board's periodic reviews of its various instruments.

REVISION OF PROCEDURES FOR DEALING WITH MEMBERS WITH OVERDUE FINANCIAL OBLIGATIONS TO THE FUND

The Executive Board adopted a timetable of procedures for dealing with members with overdue financial obligations to the Fund in August 1989. As part of the

cooperative strategy on overdue obligations which was endorsed by the Fund's Interim Committee in August 1990, this timetable was revised so as to give greater strength to the remedial and deterrent measures available to the Fund in the area of arrears.

As compared with the procedures adopted by the Executive Board in 1989, the revised timetable sets maximum time-limits between the date for the emergence of arrears to the Fund and a declaration of ineligibility, and makes explicit the timing of a declaration of non-cooperation and the initiation of the procedures for compulsory withdrawal from the Fund. It also includes the possible use of the suspension of voting and related rights once the proposed Third Amendment of the Articles of Agreement, which would make such a suspension possible, becomes effective.

THE "RIGHTS" APPROACH

In May 1990, the Fund's Interim Committee endorsed the concept of a "rights" approach, under which a member with protracted arrears to the Fund could earn rights towards future financing by the Fund by establishing a track record of performance related to programme implementation and the elimination of arrears.

On 20 June 1990, the Executive Board agreed on key elements of the programmes to be pursued and the financing of accumulated rights. It was decided that the programmes should be consistent with the macroeconomic and structural policy standards associated with programmes supported by arrangements under the Extended Fund Facility and ESAF. The member would also be expected to make maximum efforts to reduce its outstanding overdue obligations to the Fund during the period of the programme, which would generally be three years. Finally, the member would be expected, with the assistance of creditors and donors, to generate the financing needed to meet the requirements of its financing programme and, at a minimum, to remain current on obligations falling due to the Fund and the World Bank.

Rights would accumulate evenly throughout the programme with the possibility of some front-loading of rights within the first annual Fund-monitored programme. The monitoring of performance, and hence the accumulation of rights, would be on a quarterly basis. Upon the successful completion of the programme, prior clearance of the member's arrears to the Fund and approval by the Fund of a successor arrangement, the member would be able to encash its accumulated rights as the first disbursement under the successor financial arrangement.

EXTENDED BURDEN SHARING

Effective 1 July 1990, the Fund's Executive Board extended the mechanism of sharing among its members the burden of overdue obligations in order to protect the Fund against risks associated with the credit extended for the encashment of the "rights" earned by members in the context of the Fund-monitored programmes described in the previous section. These funds are also intended to provide additional liquidity to the financing of these encashments.

The amount of funds to be utilized for this purpose, SDR 1 billion, will be raised over a period of about five years through a further adjustment to the rate of charge on the use of the Fund's ordinary resources and, subject to the floor to the rate of remuneration of 80 per cent of the SDR interest rate, a further adjustment to the rate of remuneration paid to members whose currencies are being used by the Fund. The resources so generated are to be held in a second Special Contingent Account (SCA-2). When all outstanding purchases related to the encashment of rights have been

repurchased, any balances held in this account will be distributed to members that paid additional charges or received reduced remuneration.

RATE OF CHARGE ON USE OF ORDINARY RESOURCES

The Executive Board of the Fund decided that, during the financial year 1991 (from 1 May 1990 through 30 April 1991), the rate of charge on the use of the Fund's ordinary resources would continue to be set as a proportion of the SDR interest rate under rule T-1 and that the proportion would be 91.3. Upon review at mid-year, this proportion was reduced to 87.8 per cent in view of the favourable developments in the Fund's income position.

SDR VALUATION BASKET

On 5 October 1990, the Executive Board of the Fund, after reviewing the list of the currencies in the SDR valuation basket, and the weights of these currencies, decided that, effective 1 January 1991, the list of the currencies in the basket shall remain the same, and the weight of each of these currencies to be used to calculate the amount of each of these currencies in the basket would be 40 per cent for the United States dollar, 21 per cent for the deutsche mark, 17 per cent for the Japanese yen, and 11 per cent each for the French franc and pound sterling.

STATUS UNDER ARTICLE VIII OR ARTICLE XIV

Under article XIV of the Fund's Articles of Agreement, a member may choose, when joining the Fund, to avail itself of transitional arrangements, thereby maintaining and adapting existing restrictions on payments and transfers for current international transactions. Article VIII, however, prohibits members from imposing such restrictions without the approval of the Fund. During 1990, two members, namely, Thailand and Turkey, accepted the obligations of article VIII, sections 2, 3, and 4, raising to 68 the number of members that have accepted these obligations.

BUFFER STOCK FINANCING FACILITY

After examining the terms of the 1987 International Natural Rubber Agreement (INRA), the Fund's Executive Board decided, on 4 April 1990, that its Buffer Stock Financing Facility (BSFF) may be used for the financing of eligible members' compulsory contributions to the buffer stock of INRA.

8. UNIVERSAL POSTAL UNION

UPU has undertaken the study of the legal and administrative problems entrusted by the 1989 Washington Congress to the Executive Council. Among the most significant problems which may be of interest to other organizations, the following should be particularly noted:

Second phase of the transfer to the Council of part of the legislative function of the Congress;

Structure of the Convention, of the Agreements and of their Regulations;

Strengthening of the priority activities of the Union;

Future improvement of organization of work of the Union;

Postal parcels — Harmonization of conditions of acceptance and supplementary services;

Postal parcel services adapted to the requirements of the market.

9. INTERNATIONAL MARITIME ORGANIZATION

(a) Membership of the Organization

The following country became a member of the International Maritime Organization: Sao Tome and Principe (9 July 1990). Macao became an associate member on 2 February 1990. As at 31 December 1990, the number of members of IMO was 134. (These figures reflect the changes in membership resulting from the merging of the Yemen Arab Republic and the People's Democratic Republic of Yemen into the Republic of Yemen (22 May 1990) and the accession of the German Democratic Republic into the Federal Republic of Germany (3 October 1990)). There are also two associate members.

(b) Liability for damage caused by hazardous and noxious substances

During 1990, the Legal Committee continued its consideration of a possible convention on liability and compensation in connection with the carriage of hazardous and noxious goods by sea (HNS Convention). The Committee considered documents submitted by member Governments and observers, including draft conventions submitted by several Governments under the "lead country" procedure. The main substantive issues addressed referred to the definition of HNS substances, the limitation amounts and the main features of the liability to be shared between the shipowner and the cargo interests. The need for a two-tier system and the relationship between a prospective HNS treaty and other existing treaty instruments were also analysed. The Committee invited the submission of a draft convention to form the basis of the further deliberations of the Committee. This item would be given priority also in 1991.

(c) Wreck removal and related issues

It was suggested the delegations interested in the consideration of this matter might prepare a document for the consideration of the Legal Committee between 1990 and 1994, depending on the availability of time.

(d) Possible work on the draft convention on offshore mobile craft

The Legal Committee decided to request the Comité maritime international (CMI) to undertake preliminary work with a view to updating the draft convention on offshore mobile craft prepared by CMI in 1977. CMI agreed to this request.

(e) Preparations for a new legal instrument regarding the marking of explosives for their detectability

The Legal Committee recommended the IMO should continue to be closely involved in the work undertaken by ICAO for the preparation of a diplomatic conference on the new legal instrument regarding the marking of explosives for detectability.

(f) Follow-up work in connection with the Basel Convention

The Legal Committee Requested the IMO secretariat to follow actively the work undertaken under the auspices of UNEP in the preparation of a future protocol to the Basel Convention, and to contribute as necessary to that work.

(g) Amendment to rule VI of the York-Antwerp Rules, 1974

The Legal Committee expressed approval of the amended text of Article VI of the York-Antwerp Rules prepared by CMI. The action was taken in response to the resolution to the 1989 Conference on Salvage which had requested that appropriate steps be taken by IMO to ensure the speedy amendment of the York-Antwerp Rules.

(h) Law of the sea

Suitable arrangements have been made to keep the United Nations Office for Ocean Affairs and the Law of the Sea and the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea duly informed of developments in the work of IMO, and vice versa.

(i) Changes in status of IMO Conventions

- (i) *Protocol of 1990 to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974.*

This Protocol was adopted by the International Conference on the Revision of the 1974 Athens Convention on 30 March 1990 and opened for signature on 1 June 1990. In accordance with its terms, the Protocol is to enter into force 90 days following the date on which 10 States have expressed their consent to be bound by it. As at 31 December 1990, the Protocol had been signed, subject to ratification, by one State.

- (ii) *International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990*

This Convention was adopted by the Conference on International Cooperation on Oil Pollution Preparedness, Response and Cooperation on 30 November 1990 and opened for signature on the same day. In accordance with its terms, the Convention is to enter into force 12 months after the date on which no less than 15 States have become Contracting States. As at 31 December 1990, the Convention had been signed, subject to ratification, by 15 States.

- (iii) *1989 amendment to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, as amended*

The Contracting Parties to the Convention adopted, at their Twelfth Consultative Meeting on 3 November 1989, resolution LDC.37(12) concerning the amendment to Annex III to the Convention. The amendment entered into force on 19 May 1990, in accordance with the terms of the resolution and article XV(2) of the Convention.

- (iv) *1989 amendments to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973*

These amendments were adopted by the Marine Environment Protection Committee on 17 March 1989, by resolution MEPC.34(27). The conditions for their entry into force were met on 12 April 1990, and the amendments entered into force on 13 October 1990, in accordance with the terms of the resolution.

(v) *1989 amendments to the IBC Code (under MARPOL 1973/78 and SOLAS 74)*

These amendments were adopted by the Marine Environment Protection Committee on 17 March 1989, by resolution MEPC.32(27), and by the Maritime Safety Committee on 11 April 1989 by resolution MSC.14(57). The conditions for their entry into force were met on 12 April 1990 and the amendments entered into force on 13 October 1990 in accordance with the terms of the resolutions.

(vi) *1989 amendments to the BCH Code (under MARPOL 1973/78)*

These amendments were adopted by the Marine Environment Protection Committee on 17 March 1989 by resolution MEPC.33(27). The conditions for their entry into force were met on 12 April 1990 and the amendments entered into force on 13 October 1990 in accordance with the terms of the resolution.

(vii) *1989 amendment to the Convention on International Regulations for Preventing Collisions at Sea, 1972, as amended*

This amendment was adopted by the Assembly on 19 October 1989. The conditions for its entry into force were met on 19 April 1990 and the amendment entered into force on 19 April 1991 in accordance with the terms of the Assembly resolution.

(viii) *1989 (Annex V) amendments to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973*

These amendments were adopted by the Marine Environment Protection Committee on 17 October 1989 by resolutions MEPC.36(28). The conditions for their entry into force were met on 17 August 1990 and the amendments entered into force on 18 February 1991, in accordance with the terms of the resolution.

(ix) *1989 amendments to the Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended*

This amendment was adopted by the Assembly on 19 October 1989. The conditions for its entry into force were met on 19 April 1990 and the amendment entered into force on 19 April 1991 in accordance with the terms of the Assembly resolution.

10. WORLD INTELLECTUAL PROPERTY ORGANIZATION

(a) Constitutional and Procedural Questions:

(i) *Membership*

During 1990, the following States became parties to the Convention Establishing the World Intellectual Property Organization⁴⁰⁵ or to treaties administered by WIPO or took certain action in respect of those treaties:

(a) *Convention Establishing the World Intellectual Property Organization*. Singapore (10 December 1990). At the end of 1990, the number of States members of WIPO was 125;

(b) *Berne Convention for the Protection of Literary and Artistic Works*.⁴⁰⁶ Honduras (25 January 1990), Malaysia (1 October 1990), Poland (articles 1 to 21 and the Appendix excepted) (4 August 1990) and the United Kingdom (2 January 1990) became parties to the Paris Act (1971) of the Berne Convention. In accordance with a declaration of the Government of Egypt (14 March 1990), that country availed itself of the faculty provided in articles II and III of the Appendix (Special Provisions Regarding Developing Countries) to the Paris Act of the said Convention. On 3 October 1990, the German Democratic Republic ceased to be a member of the Berne Union. At the end of 1990, the number of States members of the Berne Union was 84;

(c) *Madrid Agreement concerning the International Registration of Marks*.⁴⁰⁷ On 3 October 1990, the German Democratic Republic ceased to be a member of the Madrid Union. At the end of 1990, the number of States members of the Madrid Union was 29;

(d) *The Hague Agreement concerning the International Deposit of Industrial Designs*.⁴⁰⁸ On 3 October 1990, the German Democratic Republic ceased to be a member of the Hague Union. At the end of 1990, the number of States members of the Hague Union was 19;

(e) *Nice Agreement concerning the International Classification of Goods and Services for the purposes of the Registration of Marks*.⁴⁰⁹ Japan (20 February 1990) became party to the Geneva Act (1977) of that Agreement. On 3 October 1990, the German Democratic Republic ceased to be a member of the Nice Union. At the end of 1990, the number of States members of the Nice Union was 33;

(f) *Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations*.⁴¹⁰ Lesotho (26 January 1990) and Honduras (16 February 1990) became parties to the said Convention. At the end of 1990 the number of States party to the Rome Convention was 35;

(g) *Locarno Agreement Establishing an International Classification for Industrial Designs*.⁴¹¹ Austria (26 September 1990) and the Federal Republic of Germany (25 October 1990) became parties to that Agreement. On 3 October 1990, the German Democratic Republic ceased to be a member of the Locarno Agreement. At the end of 1990, the number of States members of the Locarno Agreement was 16;

(h) *Patent Cooperation Treaty*.⁴¹² Canada (2 January 1990), Greece (chapter II excluded) (9 October 1990) and Poland (25 December 1990) became parties to that Treaty. The Government of the Republic of Korea (1 September 1990) withdrew its declaration under article 64 (1) (a) (chapter II). At the end of 1990, the number of States party to the Patent Cooperation Treaty was 45;

(i) *International Patent Classification Agreement*.⁴¹³ On 3 October 1990, the German Democratic Republic ceased to be a member of the IPC Union. At the end of 1990, the number of States members of the IPC Union was 26;

(j) *Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms*.⁴¹⁴ Honduras (6 March 1990) became a party to that Convention. At the end of 1990, the number of States party to the Geneva Convention (Phonograms) was 43;

(k) *Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the purposes of Patent Procedure*.⁴¹⁵ On 3 October 1990, the German Democratic Republic ceased to be a member of the Budapest Union. At the end of 1990, the number of States members of the Budapest Union was 23.

(ii) *Amendments*

No amendments to the WIPO Convention or the treaties administered by WIPO were adopted in 1990.

(b) Development of the legislative infrastructure and institution building in developing countries in the field of industrial property and copyright and neighbouring rights

WIPO continued to cooperate, on request, with Governments or groups of Governments of developing countries on the adoption of the new laws and regulations, or the modernization of existing ones, in the fields of industrial property and copyright and neighbouring rights, and on the creation or modernization of institutions for the administration of industrial property and copyright and neighbouring rights.⁴¹⁶

(c) Collection of intellectual property laws and treaties

WIPO continued to keep up to date its collection of the texts of laws and regulations of all countries and treaties dealing with industrial property, copyright and neighbouring rights, both in their original languages and in English and French translations. The texts concerning industrial property were published in "Industrial Property Laws and Treaties" (*Lois et traités de propriété industrielle*) and in the monthly periodical *Industrial Property/la Propriété industrielle*, whereas the texts concerning copyright and neighbouring rights were published in the monthly periodicals *Copyright/Le droit d'auteur*. Summaries of the latter texts were also published in "Copyright Law Survey" (*Résumé de lois sur le droit d'auteur*).

(d) Intellectual property questions of topical interest

(i) *Industrial property questions*

Settlement of intellectual property disputes between States. The Committee of Experts on the Settlement of Intellectual Property Disputes between States held two sessions. At the first session discussions were based on a memorandum prepared by the International Bureau which identified the main issues to be solved in a possible treaty.⁴¹⁷ At the second session discussions were based on two documents, also prepared by the International Bureau, one setting forth principles for a draft treaty⁴¹⁸ and the other containing a compilation of provisions on dispute settlement in a number of treaties.⁴¹⁹ The envisaged system for the settlement of disputes provides for consultations, good offices, conciliation and mediation, submission of the dispute to a panel and arbitration.

Harmonization of certain provisions in laws for the protection of inventions. The eighth session of the committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions was held, in two parts, at Geneva, in June and October. Discussions were based on the draft treaty on the harmonization of patent laws and draft regulations,⁴²⁰ prepared by the International Bureau, as well as on proposals and comments made by a number of delegations. The Committee of Experts examined all the provisions of the draft treaty and regulations.⁴²¹ The Preparatory Meeting for the Conclusion of a Treaty Supplementing the Paris Convention as far as Patents are Concerned met at Geneva in June and November. The discussions of the Preparatory Meeting were based on a memorandum of the Director General⁴²² and dealt with the following matters in respect of which decisions were taken:⁴²³ the substantive document to be submitted to the Diplomatic Conference; the languages of

the preparatory documents; the languages of interpretation; the draft agenda; the draft rules of procedure; the States and organizations to be invited; and the wording of the invitations. A Consultative Meeting of Developing Countries on the Harmonization of Patent Laws was held in June at Geneva; discussions were based on three documents prepared by the International Bureau of WIPO: "Provisions of Special Interest to Developing Countries in the Draft Treaty on the Harmonization of Patent Laws," "Exclusions from Patent Protection" and "Duration of Patents."⁴²⁴ The Executive Committee of the International Union for the Protection of Industrial Property (Paris Union), at its session held in September-October, decided to accept the invitation extended by the Government of the Netherlands to host in June at The Hague the Diplomatic Conference for the Conclusion of a Treaty Supplementing the Paris Convention as far as Patents are Concerned.⁴²⁵

Harmonization of laws for the protection of marks. The second session of the Committee of Experts on the Harmonization of Laws for the Protection of Marks was held in June at Geneva. Discussions were based on the draft Trademark Law Treaty, prepared by the International Bureau.⁴²⁶

International protection of geographical indications. The first session of the Committee of Experts on the International Protection of Geographical Indications was held in May-June at Geneva. Discussions were based on a document prepared by the International Bureau entitled "The Need for a New Treaty and its Possible Contents."⁴²⁷ The Committee of Experts agreed that the International Bureau would prepare a preliminary draft of a treaty to be submitted to a subsequent session.⁴²⁸

(ii) Copyright questions

Model Provisions for Legislation in the Field of Copyright. The Committee of Experts on Model Provisions for Legislation in the Field of Copyright held its third session in July at Geneva. Discussions were based on a Memorandum prepared by the International Bureau containing the provisions of the draft Model Law on Copyright.⁴²⁹ The Committee discussed in chapter I of the Model Law (Definitions) the sections devoted to the notions of audiovisual work, author, broadcasting, collective work, and in chapter II (Subject-matter of protection) the section concerning subject-matter of protection (works, including items on basic elements of the definitions of literary and artistic works, protection of computer programs, protection of sound recordings and protection of folklore) and the section on subject-matter not protected. The Committee discussed in chapter III (Rights protected) the sections on moral rights and economic rights, and in chapter IV (Limitations on economic rights) the sections on free use for teaching, free reproduction by libraries and archives, non-voluntary licences for reprographic reproduction for internal purposes, free reproduction and adaptation of computer programs, free resale and lending and non-voluntary licences for public lending. The Committee also discussed the questions on the duration of protection (chapter V), ownership of rights (chapter VI), transfer of rights, licences, waiving the exercise of moral rights (chapter VII) — in particular, the sections concerning the form of contracts and waiving of exercise of moral rights — collective administration of economic rights (chapter VIII), and obligations concerning equipment needed for acts covered by protection (chapter IX) — in particular, the sections on obligations concerning equipment (protection against uses conflicting with normal exploitation of works) and control of uses of works and possible provisions against unauthorized decoders.⁴³⁰ The final version of the Model Law on Copyright is to be prepared by the International Bureau.

(e) Exploration of intellectual property questions in possible need of norm setting

In the course of 1990, the International Bureau initiated work on the preparation of studies relating to the role of intellectual property in the field of franchising, on artificial intelligence, on individual (as distinguished from collective) contracts assigning or licensing rights in the field of copyright, on character merchandising and on insurance against the risks of litigation concerning the validity of patents.

11. INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT

SUBSTITUTION OF MEMBERSHIP: THE REPUBLIC OF YEMEN

The Minister for Foreign Affairs of the Republic of Yemen (Yemen), through a letter dated 24 July 1990 to the President of IFAD, notified IFAD that, as of 22 May 1990, the Yemen Arab Republic and the People's Democratic Republic of Yemen had merged to form the Republic of Yemen (Yemen), with Sana'a as the capital. Consequently, Yemen has replaced the Yemen Arab Republic and the People's Democratic Republic of Yemen as a single member of IFAD. The letter specifies that Yemen is fully bound by the Agreement Establishing IFAD and affirms that "all agreements, obligations and arrangements, including pledges for the Third Replenishment of IFAD's Resources, existing between the International Fund for Agricultural Development on the one hand and either the People's Democratic Republic of Yemen and/or the Yemen Arab Republic on the other, which were in force or effect on 21 May 1990, remain valid, effective and in force in accordance with their terms and conditions, *mutatis mutandis*," as the agreements, obligations and arrangements of Yemen.

This was the first occasion on which two of IFAD's members had merged to form a single State. No provisions in the Agreement Establishing IFAD or any of its other legal documents provided for such a case. Therefore, to resolve this issue, IFAD applied the general principles of international law on "State succession", which leave decisions regarding the membership status of a new State to the law and practice of the organization concerned. Also, IFAD considered the precedents from other international financial institutions and the acceptance made by the Secretary-General of the United Nations that Yemen had automatically substituted for its two predecessor States as a Member of the United Nations.

In particular, IFAD considered that, in the practice of international organizations, executive heads of these organizations exercise their own discretion and judgement in deciding whether to seek the endorsement of any of their governing bodies for the substitution of a new State for its predecessor members. If necessary, the executive head of the concerned organization submits the notification received from the appropriate authority, usually a formal communication from the Minister for Foreign Affairs of the new State or of the merging States, together with his comments thereon, to the appropriate governing body of the organization, which either takes note of the communication from the new State or takes such decisions as may be needed on any particular issue concerning the relationship between such State and the organization.

Consequently, the President of IFAD recommended, and the Executive Board approved, that:

(a) Yemen substitute the Yemen Arab Republic and the People's Democratic Republic of Yemen, as a single non-original member of IFAD in Category III,⁴³¹ as a result of their constitutional merger;

(b) the substitution of the membership by Yemen in IFAD, in relation to all matters between Yemen and IFAD, take effect from the date on which the Yemen Arab Republic and the People's Democratic Republic of Yemen officially merged to form Yemen (22 May 1990) and such substitution be recorded, to that effect, in the minutes of the fortieth session of the Executive Board. IFAD shall, accordingly, make such amendments as may be necessary to its records.⁴³²

The President, in his recommendation, confirmed that the action taken by the Executive Board on this matter did not contravene the provisions of the Agreement Establishing IFAD. The fortieth session of the Executive Board took note of the President's recommendation and notified all members, governors and the depositary of the Agreement Establishing IFAD of the above-mentioned change. The Governing Council of IFAD was also notified thereof during its fourteenth session, held on 29 and 30 May 1991.

12. UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

In addition to providing legal advice and assistance to the principal organs of UNIDO, the Director-General and various departments in the organization, including subsidiary or affiliated administrative structures, such as the International Centre for Genetic Engineering and Biotechnology, the Legal Service of UNIDO continued to deal with matters related to the completion of the conversion of UNIDO into a specialized agency. The activities can be summed up as follows:

(a) Constitutional matters

With the merger of the Democratic Yemen and Yemen into one single sovereign State — the Republic of Yemen⁴³³ — and the accession of the German Democratic Republic to the Federal Republic of Germany⁴³⁴ by the end of 1990, 151 States were members of UNIDO.

(b) Agreements with intergovernmental, non-governmental, governmental and other organizations

Based on the Guidelines regarding Relationship Agreements with Organizations of the United Nations System other than the United Nations, and with other Intergovernmental and Governmental Organizations, and regarding Appropriate Relations with Non-governmental and other Organizations, adopted by the General Conference,⁴³⁵ UNIDO concluded the following agreements in 1990:

- (i) Upon approval by the Industrial Development Board at its second⁴³⁶ and fifth⁴³⁷ sessions, relationship agreements with the following intergovernmental organizations not in the United Nations system:⁴³⁸

Relationship Agreement with the Agency for Cultural and Technical Cooperation (ACCT), signed on 22 November 1990;

Relationship Agreement with the Central African States Development Bank (BDEAC), signed on 5 January and 13 February 1990;

Relationship Agreement with the International Centre for Scientific and Technical Information (ICSTI), signed on 22 September and 29 October 1990;

Relationship Agreement with the Commission of the Cartagena Agreement (JUNAC), signed on 16 November 1989 and 22 January 1990;

Relationship Agreement with the South Asia Cooperative Environment Programme (SACEP), signed on 9 November and 27 December 1990;

Relationship Agreement with the West African Development Bank (WADB), signed on 18 May 1990.

- (ii) Agreements or working arrangements with the following Governments or governmental organizations:

Letter of understanding with the Government of Costa Rica, signed on 5 April 1990;

Memorandum of understanding with the Government of Cuba on a joint programme of international cooperation in the area of sugar cane derivatives, signed on 18 June 1990;

Exchange of letters with the Permanent Representative of France to UNIDO concerning specific activities in the food industry sector, signed on 7 and 8 August 1990;

Agreement regarding cooperation with the Italian Institute of Foreign Trade, signed on 23 April 1990;

Exchange of letters with the Research Area of Trieste regarding the extension until 31 December 1990 of the 1989 agreement and related rental agreement, dated 10 May and 5 June 1990; a further exchange of letters regarding the extension until 31 December 1991 of the 1989 agreement and related rental agreement, dated 8 November and 19 December 1990;

Memorandum of understanding on industrial development with the Government of Turkey, signed on 10 July 1990.

(c) Agreements with the United Nations or its organs

- (i) With the United Nations: UNIDO concluded an agreement on arrangements for the sale of UNIDO publications.⁴³⁸
- (ii) With the United Nations Centre for Human Settlements (HABITAT): UNIDO signed an agreement on the co-sponsorship of the Second Consultation on the Wood and Wood Products Industry.⁴³⁸
- (iii) With the International Trade Centre UNCTAD/GATT: UNIDO signed a memorandum of understanding concerning cooperation.⁴³⁸
- (iv) With UNDP: UNIDO signed an arrangement concerning the Junior Professional Officer programme (based on the memorandum of understanding concerning the integration of the UNIDO field service within the UNDP field office).⁴³⁸

(d) Standard Basic Cooperation Agreement

Such agreements were concluded with Burundi, Cuba, and Togo.⁴³⁸

13. INTERNATIONAL ATOMIC ENERGY AGENCY

CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL⁴³⁹

During 1990, there were no new adherences. By the end of 1990 there were 27 parties to the Convention.

CONVENTION ON EARLY NOTIFICATION OF A NUCLEAR ACCIDENT⁴⁴⁰

CONVENTION ON ASSISTANCE IN THE CASE OF A NUCLEAR ACCIDENT OR
RADIOLOGICAL EMERGENCY⁴⁴¹

During 1990, eight more States — Argentina, Brazil, Canada, Italy, Republic of Korea, Nigeria, Romania and the United Kingdom — and two international Organizations — the Food and Agriculture Organization of the United Nations and the World Meteorological Organization — adhered to the Notification Convention. By the end of 1990, there were 54 parties to the Convention.

In 1990, nine more States — Argentina, Brazil, Finland, Italy, Republic of Korea, Libyan Arab Jamahiriya, Nigeria, Romania and the United Kingdom — and two international organizations — the Food and Agriculture Organization of the United Nations and the World Meteorological Organization — adhered to the Convention on Assistance. By the end of 1990, there were 50 parties to the Convention.

VIENNA CONVENTION ON CIVIL LIABILITY FOR NUCLEAR DAMAGE, 1963⁴⁴²

One State — Poland — expressed its consent to be bound by the Convention during 1990. By the end of the year, there were 14 parties to the Convention.

The Director General of IAEA, in his capacity as the depositary of the Vienna Convention, received the required number of requests for the convening of a revision conference in accordance with article XXVI (1) of the Convention.

JOINT PROTOCOL RELATING TO THE APPLICATION OF THE VIENNA CONVENTION AND
THE PARIS CONVENTION

Two States — Hungary and Poland — expressed consent to be bound by the Protocol during 1990. Thus, by the end of the year the Protocol had been signed by 22 States and 5 States had adhered to it (4 are parties to the Vienna Convention, 1 is party to the Paris Convention). Pursuant to article VII of the Joint Protocol, adherence of at least five States party to the Vienna Convention and five States party to the Paris Convention is required for the entry into force of the Protocol.

EXAMINATION OF THE QUESTION OF LIABILITY FOR NUCLEAR DAMAGE

At its session in February 1990, the IAEA Board of Governors established a Standing Committee on Liability for Nuclear Damage. The tasks of the committee are: to consider civil and State liability for nuclear damage and the relationship

between them; to keep under review problems relating to the Vienna Convention; and to make the necessary preparations and arrangements for a revision conference for the Vienna Convention. It is open to all member States; other States and interested organizations may be invited as observers. The new Standing Committee replaced both the Working Group established in 1989 and the Standing Committee on Civil Liability established in 1963.

In 1990, the Committee held two sessions, in April and October, during which a consensus was reached on the need to revise the existing civil liability conventions. In this context, specific draft amendments to the Vienna Convention relating, *inter alia*, to the concept of nuclear damage, geographical scope, application to military installations, financial limit of liability and time-limits for submission of claims were agreed upon as a basis for future consideration. Consideration was also given to the establishment of a system of supplementary funding for compensation for nuclear damage in addition to the liability of the operator as well as to the establishment of an international claims settlement procedure. Issues of State liability were also considered.

The report of the first session of the Standing Committee was considered by the Board of Governors in September. The thirty-fourth session of the General Conference, acting upon the relevant report by the Board, reiterated the priority it attached to the question of liability for nuclear damage and requested the Board to submit a progress report to its next session.⁴⁴³

SAFEGUARDS AGREEMENTS

During 1990, Safeguards Agreements were concluded between IAEA and four States: Kiribati, Malta, Togo and Pakistan. The Agreements with Kiribati, Malta and Togo were concluded pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).

The Agreements with Kiribati⁴⁴⁴ and Malta,⁴⁴⁵ as well as the Safeguards Agreements concluded in 1988 with Saint Lucia⁴⁴⁶ and in 1989 with Tunisia⁴⁴⁷ and Viet Nam,⁴⁴⁸ entered into force in 1990. The Agreement with Algeria,⁴⁴⁹ which was in force provisionally in 1989, entered into force definitively in 1990.

The NPT Safeguards Agreement with the German Democratic Republic ceased to be in force on 3 October 1990, the date on which the German Democratic Republic acceded to the Federal Republic of Germany. As a consequence, the Safeguards Agreement between the non-nuclear-weapon States of the European Atomic Energy Community (EURATOM), EURATOM and the Agency⁴⁵⁰ — applies to the territory of the former German Democratic Republic as of the date of its accession to the Federal Republic of Germany.

By the end of 1990, there were 177 Safeguards Agreements in force with 104 States,⁴⁵¹ 84 of which were concluded pursuant to the NPT and/or the Treaty of Tlatelolco with 88 non-nuclear-weapon States and 3 nuclear-weapon States.

CODE OF PRACTICE ON THE INTERNATIONAL TRANSBOUNDARY MOVEMENT OF RADIOACTIVE WASTE⁴⁵²

In September 1990, the General Conference, at its 34th session, adopted the Code of Practice on the International Transboundary Movement of Radioactive Waste, as elaborated by the Technical Working Group of Experts. The Code affirms the sovereign right of every State to prohibit the movement of radioactive waste into, from or through its territory. It requires that transboundary movements of radioactive

waste should only take place in accordance with internationally accepted safety standards, with prior notification and consent of the sending, receiving and transit States and in accordance with their respective laws and regulations; the Code prescribes that all States involved should have the administrative and technical capacity as well as the regulatory structure required to manage and dispose of radioactive wastes in a manner consistent with international safety standards.

AFRICAN REGIONAL COOPERATIVE AGREEMENT⁴⁵³

The African Regional Cooperative Agreement for Research, Development and Training related to Nuclear Energy (AFRA) entered into force on 4 April 1990. By the end of the year, it had been accepted by nine States.

PUBLICATION OF LEGAL SERIES NO. 15

A compilation of bilateral, regional and multilateral agreements provided by member States of the IAEA relating to cooperation in the field of nuclear safety was published in 1990.

NOTES

¹ Adopted without a vote.

² *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 42 (A/45/42)*, sect. IV, p. 15; also reproduced in *The United Nations Disarmament Yearbook*, vol. 15: 1990 (United Nations publication, Sales No. E.91.IX.8), p. 13.

³ Adopted without a vote.

⁴ *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 42 (A/45/42)*, sect. II, para. 7.

⁵ Adopted without a vote.

⁶ A/45/372 and Corr.1.

⁷ Adopted by a recorded vote of 133 to 3, with 16 abstentions.

⁸ A/45/568.

⁹ Adopted without a vote.

¹⁰ Adopted by a recorded vote of 123 to 6, with 22 abstentions.

¹¹ Adopted by a recorded vote of 131 to none, with 22 abstentions.

¹² Adopted by a recorded vote of 99 to none, with 50 abstentions.

¹³ Adopted without a vote.

¹⁴ Adopted by a recorded vote of 132 to 12, with 9 abstentions.

¹⁵ 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.

¹⁶ Adopted by a recorded vote of 126 to 14, with 12 abstentions.

¹⁷ Adopted by a recorded vote of 146 to one, with 6 abstentions.

¹⁸ Adopted by a recorded vote of 125 to 17, with 10 abstentions.

¹⁹ Adopted without a vote.

²⁰ A/45/373, annex; the study was subsequently issued as a United Nations publication under the title *Nuclear weapons: a comprehensive study* (Sales No. E.91.IX.10).

²¹ United Nations, *Treaty Series*, vol. 729, p. 161.

²² Adopted by a recorded vote of 127 to 3, with 17 abstentions.

²³ United Nations, *Treaty Series*, vol. 480, p. 43.

- ²⁴ Adopted by a recorded vote of 140 to 2, with 6 abstentions.
- ²⁵ Adopted by a recorded vote of 116 to 2, with 28 abstentions.
- ²⁶ Adopted by a recorded vote of 145 to none, with 3 abstentions.
- ²⁷ United Nations, *Treaty Series*, vol. 634, p. 281.
- ²⁸ Adopted by a recorded vote of 141 to none, with 3 abstentions.
- ²⁹ Adopted by a recorded vote of 145 to none, with 4 abstentions.
- ³⁰ Adopted without a vote.
- ³¹ See note 15 above.
- ³² Adopted by a recorded vote of 98 to 2, with 50 abstentions.
- ³³ Adopted by a recorded vote of 114 to 3, with 28 abstentions.
- ³⁴ General Assembly resolution 2832 (XXVI) of 16 December 1971.
- ³⁵ Adopted by a recorded vote of 128 to 4, with 17 abstentions.
- ³⁶ Adopted without a vote.
- ³⁷ For the text see *The United Nations Disarmament Yearbook*, vol. 15: 1990 (United Nations publication, Sales No. E.91.IX.8), appendix IV.
- ³⁸ League of Nations, *Treaty Series*, vol. XCIV (1929), p. 65.
- ³⁹ Adopted by a recorded vote of 149 to none, with 1 abstention.
- ⁴⁰ Adopted without a vote.
- ⁴¹ Adopted without a vote.
- ⁴² Adopted by a recorded vote of 141 to 1, with 11 abstentions.
- ⁴³ Adopted by a recorded vote of 144 to none, with 9 abstentions.
- ⁴⁴ *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 42 (A/45/42)*, para. 34.
- ⁴⁵ All three resolutions as well as the decision were adopted without a vote.
- ⁴⁶ For the text see A/CONF/95/15 and Corr.1-5. See also *Juridical Yearbook, 1980*, p. 113.
- ⁴⁷ See A/45/363, para. 4.
- ⁴⁸ *International Legal Materials*, vol. XXX, No. 1 (January 1991), p. 1.
- ⁴⁹ CD/1070, 4 March 1991.
- ⁵⁰ A/42/521-S/19085; see *Official Records of the Security Council, Forty-second Year, Supplement for July, August and September 1990*, document S/19085.
- ⁵¹ They are General Assembly resolutions 45/55 B, entitled "Confidence-building measures in outer space", adopted by a recorded vote of 149 to none, with 1 abstention; 45/58 J entitled "Confidence- and security-building measures and conventional disarmament in Europe", adopted without a vote; 45/58 M entitled "Regional disarmament, including confidence-building measures", adopted without a vote; 45/58 O entitled "Defensive security concepts and policies", adopted by a recorded vote of 149 to none, with 5 abstentions; 45/58 T entitled "Regional disarmament", adopted by a recorded vote of 142 to none, with 10 abstentions; 45/62 F entitled "Implementation of the guidelines for appropriate types of confidence-building measures", adopted without a vote; and decisions 45/416 entitled "Naval armaments and disarmaments", adopted by a recorded vote of 152 to one, with no abstentions; and 45/418, entitled "Conventional disarmament on a regional scale", adopted without a vote.
- ⁵² General Assembly resolution 2734 (XXV); reproduced in *Juridical Yearbook, 1970*, p. 62.
- ⁵³ Adopted by a recorded vote of 123 to 1, with 29 abstentions.
- ⁵⁴ See A/45/791.
- ⁵⁵ For the report of the Subcommittee, see A/AC.105/457.
- ⁵⁶ A/AC.105/C.2/L.154/Rev.5.
- ⁵⁷ A/AC.105/C.2/L.177.
- ⁵⁸ A/AC.105/C.2/15 and Add.1-9.
- ⁵⁹ A/AC.105/C.2/16 and Add.1-8.

⁶⁰ See *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 20 (A/45/20)*, chap. II, sect. C.

⁶¹ Adopted without a vote.

⁶² See A/45/821 and Corr.1.

⁶³ 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); Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (resolution 34/68, annex).

⁶⁴ Adopted by a recorded vote of 98 to none, with 7 abstentions.

⁶⁵ See A/45/789.

⁶⁶ Adopted by a recorded vote of 107 to none, with 7 abstentions.

⁶⁷ See A/45/789.

⁶⁸ For detailed information, see *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 25 (A/45/25)*.

⁶⁹ *Ibid.*, annex.

⁷⁰ *International Legal Materials*, vol. XXVI, No. 6 (November 1987), p. 1529.

⁷¹ *Ibid.*, p. 1550.

⁷² *International Legal Materials*, vol. XXVIII, No. 3 (May 1989), p. 657.

⁷³ UNEP/GCSS.II/2 and Corr.1 and 2, paras. 51-52; and UNEP/GCSS.II/2/Add.3, paras. 24-32.

⁷⁴ For detailed information, see *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 46 (A/45/46)*.

⁷⁵ All decisions of the Committee were adopted by consensus.

⁷⁶ United Nations, *Treaty Series*, vol. 1046, p. 120.

⁷⁷ A/CONF.151/PC/10, annex I.

⁷⁸ Adopted without a vote.

⁷⁹ See A/45/850.

⁸⁰ *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 46 (A/45/46)*, annex I.

⁸¹ Adopted without a vote.

⁸² See A/45/851.

⁸³ Adopted without a vote.

⁸⁴ See A/45/849/Add.3.

⁸⁵ A/45/588.

⁸⁶ Adopted without a vote.

⁸⁷ See A/45/848.

⁸⁸ See E/1990/94, annex.

⁸⁹ For detailed information, see *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 12 (A/45/12)*, and *ibid.*, *Supplement No. 12A (A/45/12/Add.1)*.

⁹⁰ For detailed information, see *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 12A (A/45/12/Add.1)*.

⁹¹ United Nations, *Treaty Series*, vol. 189, p. 137.

⁹² *Ibid.*, vol. 606, p. 267.

⁹³ *Ibid.*, vol. 1249, p. 13; also reproduced in *Juridical Yearbook, 1979*, p. 115.

⁹⁴ Adopted without a vote.

⁹⁵ See A/45/763.

- ⁹⁶ General Assembly resolution 44/25, annex.
- ⁹⁷ A/45/625, annex.
- ⁹⁸ *Official Records of the General Assembly, Forty-second Session, Supplement No. 12A (A/42/12/Add.1)*, para. 23.
- ⁹⁹ *Ibid.*, *Forty-fifth Session, Supplement No. 12A (A/45/12/Add.1)*, para. 21.
- ¹⁰⁰ United Nations, *Treaty Series*, vol. 1019, p. 175.
- ¹⁰¹ *Ibid.*, vol. 976, p. 3.
- ¹⁰² *Ibid.*, p. 105.
- ¹⁰³ E/CONF.82/15 and Corr.2; issued also as a United Nations publication (Sales No. E.91.XI.6).
- ¹⁰⁴ Adopted without a vote.
- ¹⁰⁵ See A/S-17/11.
- ¹⁰⁶ *Report of the International Conference on Drug Abuse and Illicit Trafficking, Vienna, 17-26 June 1987* (United Nations publication, Sales No. E.87.I.18), chap. I, sect. A.
- ¹⁰⁷ Adopted without a vote.
- ¹⁰⁸ See A/45/754.
- ¹⁰⁹ Adopted without a vote.
- ¹¹⁰ See A/45/754.
- ¹¹¹ See General Assembly resolution S-17/2, annex.
- ¹¹² See *Report of the International Conference on Drug Abuse and Illicit Trafficking, Vienna, 17-26 June 1987* (United Nations publication, Sales No. E.87.I.18), chap. I, sect. A.
- ¹¹³ Adopted without a vote.
- ¹¹⁴ See A/45/764.
- ¹¹⁵ Adopted without a vote.
- ¹¹⁶ See A/45/764.
- ¹¹⁷ Adopted without a vote.
- ¹¹⁸ See A/45/764.
- ¹¹⁹ A/45/652.
- ¹²⁰ See A/45/652/Add.1, annex.
- ¹²¹ See General Assembly resolution 2200 A (XXI), annex; also reproduced in *Juridical Yearbook, 1966*, p. 170.
- ¹²² United Nations, *Treaty Series*, vol. 993, p. 3.
- ¹²³ *Ibid.*, vol. 999, p. 171.
- ¹²⁴ *Ibid.*
- ¹²⁵ Adopted without a vote.
- ¹²⁶ See A/45/761.
- ¹²⁷ *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40, vols. I and II (A/45/40)*.
- ¹²⁸ See General Assembly resolution 2106 A (XX), annex; reproduced in *Juridical Yearbook, 1965*, p. 63; see also United Nations, *Treaty Series*, vol. 660, p. 195.
- ¹²⁹ Adopted without a vote.
- ¹³⁰ See A/45/746.
- ¹³¹ See General Assembly resolution 38/14.
- ¹³² See General Assembly resolution 3068 (XXVIII), annex; reproduced in *Juridical Yearbook, 1973*, p. 70; see also United Nations, *Treaty Series*, vol. 1015, p. 243.
- ¹³³ Adopted by a recorded vote of 120 to 1, with 30 abstentions.
- ¹³⁴ See A/45/747.
- ¹³⁵ See General Assembly resolution 34/180, annex; also reproduced in *Juridical Yearbook, 1979*, p. 115.
- ¹³⁶ Adopted without a vote.

- ¹³⁷ See A/45/757.
- ¹³⁸ *Official Records of the General Assembly, Forty-fourth Session, Supplement No. 38 (A/44/38)*, sec. V.
- ¹³⁹ See General Assembly resolution 39/46, annex; also reproduced in *Juridical Yearbook, 1984*, p. 135.
- ¹⁴⁰ Adopted without a vote.
- ¹⁴¹ See A/45/765.
- ¹⁴² General Assembly resolution 44/25 of 20 November 1989, annex.
- ¹⁴³ Adopted without a vote.
- ¹⁴⁴ See A/45/753.
- ¹⁴⁵ Adopted without a vote.
- ¹⁴⁶ See A/45/838.
- ¹⁴⁷ The text of the Convention is reproduced in chapter IV of the present volume.
- ¹⁴⁸ Adopted without a vote.
- ¹⁴⁹ See A/45/745.
- ¹⁵⁰ General Assembly resolution 217 A (III).
- ¹⁵¹ See A/45/636, annex.
- ¹⁵² See A/45/668, annex.
- ¹⁵³ See E/CN.4/1990/39, annex.
- ¹⁵⁴ E/C.12/1989/3.
- ¹⁵⁵ Adopted without a vote.
- ¹⁵⁶ See A/45/759.
- ¹⁵⁷ Adopted by a recorded vote of 113 to 15, with 23 abstentions.
- ¹⁵⁸ See A/45/759.
- ¹⁵⁹ Adopted without a vote.
- ¹⁶⁰ See A/45/749.
- ¹⁶¹ Adopted without a vote.
- ¹⁶² See A/45/749.
- ¹⁶³ Adopted without a vote.
- ¹⁶⁴ See A/45/750.
- ¹⁶⁵ Adopted without a vote.
- ¹⁶⁶ See A/45/749.
- ¹⁶⁷ *Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972* (United Nations publication, Sales No. E.73.II.A.14 and corrigendum), chap. I.
- ¹⁶⁸ See *Official Records of the Economic and Social Council, 1990, Supplement No. 2 and corrigendum (E/1990/41)*, chap. II, sect. A.
- ¹⁶⁹ See E/CN.4/1991/2-E/CN.4/Sub.2/1990/59.
- ¹⁷⁰ Adopted by a recorded vote of 121 to 10, with 21 abstentions.
- ¹⁷¹ See A/45/759.
- ¹⁷² General Assembly resolution 44/34, annex.
- ¹⁷³ Adopted without a vote.
- ¹⁷⁴ See A/45/838.
- ¹⁷⁵ E/CN.4/1988/22 and Add.1 and 2, E/CN.4/1989/25 and E/CN.4/1990/22 and Corr.1 and Add.1.
- ¹⁷⁶ Adopted without a vote.
- ¹⁷⁷ See A/45/762.
- ¹⁷⁸ General Assembly resolution 36/55 of 25 November 1981.
- ¹⁷⁹ E/CN.4/Sub.2/1982/32.
- ¹⁸⁰ Adopted without a vote.
- ¹⁸¹ See A/45/749.

- 182 E/CN.4/1990/72.
- 183 Adopted without a vote.
- 184 See A/45/751.
- 185 A/45/524.
- 186 *Winning the Human Race? The Report of the Independent Commission on International Humanitarian Issues* (London and New Jersey, Zed Books Ltd., 1988).
- 187 Adopted by a recorded vote of 121 to 1, with 29 abstentions.
- 188 See A/45/750.
- 189 General Assembly resolution 41/128, annex.
- 190 Adopted without a vote.
- 191 See A/45/750.
- 192 E/CN.4/1990/9/Rev.1.
- 193 Adopted without a vote.
- 194 See A/45/750.
- 195 Adopted without a vote.
- 196 See A/45/838.
- 197 Adopted without a vote.
- 198 See A/45/756.
- 199 See A/CONF.144/28.
- 200 A/45/324.
- 201 A/45/629.
- 202 See A/CONF.144/28, chap. I.
- 203 United Nations, *Treaty Series*, vol. 78, p. 277.
- 204 Adopted without a vote.
- 205 See A/45/838.
- 206 Adopted without a vote.
- 207 See A/45/756.
- 208 General Assembly resolution 35/171, annex.
- 209 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. A.
- 210 *Ibid.*, sect. B.
- 211 General Assembly resolution 40/34, annex.
- 212 See E/1987/43.
- 213 Adopted without a vote.
- 214 See A/45/756.
- 215 E/1990/31/Add.1.
- 216 See A/CONF.144/28, chap. IV.
- 217 Adopted without a vote.
- 218 See A/45/756.
- 219 E/CN.5/536, annex IV.
- 220 See *Human Rights: A Compilation of International Instruments* (United Nations publication, Sales No. E.88.XIV.1), sect. G.
- 221 General Assembly resolution 40/33, annex.
- 222 General Assembly resolution 43/173, annex.
- 223 General Assembly resolution 45/119, annex.
- 224 Adopted without a vote.
- 225 See A/45/756.
- 226 Adopted without a vote.
- 227 See A/45/756.

²²⁸ Adopted without a vote.

²²⁹ See A/45/756.

²³⁰ Adopted without a vote.

²³¹ See A/45/756.

²³² Reference to the imposition of a sentence may not be necessary for all countries.

²³³ Some countries may wish to omit this paragraph or provide an optional ground for refusal under article 4.

²³⁴ Some countries may wish to add the following text: "Reference to an offence of a political nature shall not include any offence in respect of which the Parties have assumed an obligation, pursuant to any multilateral convention, to take prosecutorial action where they do not extradite, or any other offence that the Parties have agreed is not an offence of a political character for the purpose of extradition."

²³⁵ Some countries may wish to make this an optional ground for refusal under article 4.

²³⁶ Some countries may wish to add to article 3 the following ground for refusal: "If there is insufficient proof, according to the evidentiary standards of the requested State, that the person whose extradition is requested is a party to the offence". (See also note 239.)

²³⁷ Some countries may wish to apply the same restriction to the imposition of a life, or indeterminate, sentence.

²³⁸ Some countries may wish to make specific reference to a vessel under its flag or an aircraft registered under its law at the time of the commission of the offence.

²³⁹ Countries that require a judicial assessment of the sufficiency of evidence may wish to add the following clause: "and sufficient proof in a form acceptable under the law of the requested State, establishing, according to the evidentiary standards of that State, that the person is a party to the offence". (See also note 236.)

²⁴⁰ The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts and, therefore, would require a clause setting out the authentication required.

²⁴¹ Some countries may wish to add, as a third case, explicit consent of the person.

²⁴² Some countries may not wish to assume that obligation and may wish to include other grounds in determining whether or not to grant consent.

²⁴³ Some countries may wish to agree on other grounds for refusal, which may also warrant refusal for extradition, such as those related to the nature of the offence (e.g., political, fiscal, military) or to the status of the person (e.g., their own nationals).

²⁴⁴ Some countries may wish to consider reimbursement of costs incurred as a result of withdrawal of a request for extradition or provisional arrest.

²⁴⁵ Adopted without a vote.

²⁴⁶ See A/45/756.

²⁴⁷ Additions to the scope of assistance to be provided, such as provisions covering information on sentences passed on nationals of the Parties, can be considered bilaterally. Obviously, such assistance must be compatible with the law of the requested State.

²⁴⁸ Article 2 recognizes the continuing role of informal assistance between law enforcement agencies and associated agencies in different countries.

²⁴⁹ Article 4 provides an illustrative list of the grounds for refusal.

²⁵⁰ Some countries may wish to delete or modify some of the provisions or include other grounds of refusal, such as those related to the nature of the offence (e.g., fiscal), the nature of the applicable penalty (e.g., capital punishment), requirements of shared concepts (e.g., double jurisdiction, no lapse of time) or specific kinds of assistance (e.g., interception of telecommunications, performing deoxyribonucleic-acid (DNA) tests). In particular, some countries may wish to include as grounds for refusal the fact that the act on which the request is based would not be an offence if committed in the territory of the requested State (dual criminality).

²⁵¹ This list can be reduced or expanded in bilateral negotiations.

²⁵² More detailed provisions may be included concerning the provision of information on the time and place of execution of the request and requiring the requested State to inform promptly the requesting State in cases where significant delay is likely to occur or where a decision is made not to comply with the request and the reasons for refusal.

²⁵³ Some countries may wish to omit article 8 or modify it, e.g., restrict it to fiscal offences.

²⁵⁴ Provisions relating to confidentiality will be important for many countries but may present problems to others. The nature of the provisions in individual treaties can be determined in bilateral negotiations.

²⁵⁵ More detailed provisions relating to the service of documents, such as writs and judicial verdicts, can be determined bilaterally. Provisions may be desired for the service of documents by mail or other manner and for the forwarding of proof of service of the documents. For example, proof of service could be given by means of a receipt dated and signed by the person served or by means of a declaration made by the requested State that service has been affected, with an indication of the form and date of such service. One or other of these documents could be sent promptly to the requesting State. The requested State could, if the requesting State so requests, state whether service has been affected in accordance with the law of the requested State. If service could not be effected, the reasons could be communicated promptly by the requested State to the requesting State.

²⁵⁶ Depending on travel distance and related arrangements.

²⁵⁷ Article 11 is concerned with the obtaining of evidence in judicial proceedings, the taking of a person's statement by a less formal process and the production of items of evidence.

²⁵⁸ In bilateral negotiations, provisions may also be introduced to deal with such matters as the modalities and time of restitution of evidence and the setting of a time-limit for the presence of the person in custody in the requesting State.

²⁵⁹ Provisions relating to the payment of the expenses of the person providing assistance are contained in paragraph 3 of article 14. Additional details, such as provision for the payment of costs in advance, can be the subject of bilateral negotiations.

²⁶⁰ The provisions in article 15 may be required as the only way of securing important evidence in proceedings involving serious national and transnational crime. However, as they may raise difficulties for some countries, the precise content of the article, including any additions or modifications, can be determined in bilateral negotiations.

²⁶¹ The question may arise as to whether this should be discretionary. This provision can be the subject of bilateral negotiations.

²⁶² Bilateral arrangements may cover the provision of information on the results of search and seizure and the observance of conditions imposed in relation to the delivery of seized property.

²⁶³ The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts, and, therefore, would require a clause setting out the authentication required.

²⁶⁴ More detailed provisions may be included. For example, the requested State would meet the ordinary cost of fulfilling the request for assistance except that the requesting State would bear (a) the exceptional or extraordinary expenses required to fulfil the request, where required by the requested State and subject to previous consultations; (b) the expenses associated with conveying any person to or from the territory of the requested State, and any fees, allowances or expenses payable to that person while in the requesting State pursuant to a request under article 11, 13 or 14; (c) the expenses associated with conveying custodial or escorting officers; and (d) the expenses involved in obtaining reports of experts.

²⁶⁵ The present Optional Protocol is included on the ground that questions of forfeiture are conceptually different from, although closely related to, matters generally accepted as falling

within the description of mutual assistance. However, States may wish to include these provisions in the text because of their importance in dealing with organized crime. Moreover, assistance in forfeiting the proceeds of crime has now emerged as a new instrument in international cooperation. Provisions similar to those outlined in the present Protocol appear in many bilateral assistance treaties. Further details can be provided in bilateral arrangements. One matter that could be considered is the need for other provisions dealing with issues related to bank secrecy. An addition could, for example, be made to paragraph 4 of the present Protocol providing that the requested State shall, upon request, take such measures as are permitted by its law to require compliance with monitoring orders by financial institutions. Provision could be made for the sharing of the proceeds of crime between the Contracting States or for consideration of the disposal of the proceeds on a case-by-case basis.

²⁶⁶ The Parties might consider widening the scope of the present Protocol by the inclusion of references to victims' restitution and the recovery of fines imposed as a sentence in a criminal prosecution.

²⁶⁷ Adopted without a vote.

²⁶⁸ See A/45/756.

²⁶⁹ The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts and, therefore, would require a clause setting out the authentication required.

²⁷⁰ When negotiating on the basis of the present Model Treaty, States may wish to add other grounds for refusal or conditions to this list, relating, for example, to the nature or gravity of the offence, to the protection of fundamental human rights or to considerations of public order.

²⁷¹ Adopted without a vote.

²⁷² See A/45/756.

²⁷³ The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts and, therefore, would require a clause setting out the authentication required.

²⁷⁴ When negotiating on the basis of the present Model Treaty, States may wish to waive the requirement of dual criminality.

²⁷⁵ When negotiating on the basis of the present Model Treaty, States may wish to add other grounds for refusal or conditions to this list, relating, for example, to the nature or gravity of the offence, to the protection of fundamental human rights or to considerations of public order.

²⁷⁶ *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).

²⁷⁷ For detailed information on the work of the Preparatory Commission, see the report of the Secretary-General (A/45/721 and Corr.1).

²⁷⁸ LOS/PCN/L.87 and Corr.1, annex.

²⁷⁹ LOS/PCN/L.87, para. 40.

²⁸⁰ LOS/PCN/WP.47/Rev.1.

²⁸¹ LOS/PCN/WP.49/Rev.1.

²⁸² LOS/PCN/SCN.2/L.7.

²⁸³ LOS/PCN/SCN.3/WP.6/Add.1.

²⁸⁴ LOS/PCN/SCN.3/WP.6/Add.5.

²⁸⁵ LOS/PCN/SCN.4/WP.9.

²⁸⁶ Adopted by a recorded vote of 140 to 2, with 6 abstentions.

²⁸⁷ A/45/712.

²⁸⁸ A/45/563.

²⁸⁹ For the composition of the Court, see General Assembly decision 45/307.

²⁹⁰ As of 31 December 1990, 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 51.

²⁹¹ For detailed information, see *I.C.J. Yearbook 1989-1990*, No. 44, and *I.C.J. Yearbook 1990-1991*, No. 45.

²⁹² *I.C.J. Reports 1989*, p. 174.

²⁹³ *I.C.J. Reports 1988*, p. 66.

²⁹⁴ *I.C.J. Reports 1990*, p. 89.

²⁹⁵ *I.C.J. Reports 1989*, p. 132.

²⁹⁶ *Ibid.*, p. 135.

²⁹⁷ *Ibid.*, pp. 136-144 and 145-160.

²⁹⁸ *I.C.J. Reports 1990*, p. 86.

²⁹⁹ *I.C.J. Reports 1989*, p. 12.

³⁰⁰ *I.C.J. Reports 1990*, p. 64.

³⁰¹ *Aegean Sea Continental Shelf, I.C.J. Reports 1976*, p. 9, para. 25; *United States Diplomatic and Consular Staff in Tehran, I.C.J. Reports 1979*, p. 19, para. 36.

³⁰² Article 41, paragraph 2, of the Statute.

³⁰³ *I.C.J. Reports 1990*, pp. 72-73 and 74-78.

³⁰⁴ *Ibid.*, pp. 79-84.

³⁰⁵ For detailed information, see *I.C.J. Yearbook 1990-1991*, No. 45.

³⁰⁶ *I.C.J. Reports 1990*, p. 149.

³⁰⁷ For detailed information, see *I.C.J. Yearbook 1990-1991*, No. 45, p. 160.

³⁰⁸ *I.C.J. Reports 1990*, p. 3.

³⁰⁹ *Ibid.*, pp. 7-8.

³¹⁰ *Ibid.*, pp. 9-10, 11-17 and 18-62.

³¹¹ *Ibid.*, p. 92.

³¹² An analysis of the judgment is taken from *I.C.J. Yearbook 1990-1991*, No. 45, p. 162.

³¹³ *I.C.J. Reports 1990*, p. 3.

³¹⁴ *American Journal of International Law*, 1917, p. 716.

³¹⁵ *I.C.J. Reports 1954*, p. 19.

³¹⁶ *I.C.J. Reports 1990*, p. 138.

³¹⁷ *Ibid.*, p. 146.

³¹⁸ For the membership of the Commission, see *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 10 (A/45/10)*, chap. I.

³¹⁹ For detailed information, see *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 10 (A/45/10)*.

³²⁰ A/CN.4/430 and Add.1.

³²¹ For details, see *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 10 (A/45/10)*, chap. II, sect. C.

³²² A/CN.4/431 and Corr.1.

³²³ A/CN.4/421/Add.2.

³²⁴ A/CN.4/427 and Corr.1.

³²⁵ A/CN.4/427/Add.1.

³²⁶ A/CN.4/425 and Corr.1 and A/CN.4/425/Add.1 and Corr.1.

³²⁷ A/CN.4/424 and Corr.1.

³²⁸ A/CN.4/432.

³²⁹ A/CN.4/428 and Corr.1, 2 and 4.

³³⁰ *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 10 (A/45/10)*.

- ³³¹ Adopted without a vote.
- ³³² See A/45/735.
- ³³³ For the membership of the Commission, see *Official Records of the General Assembly, Thirty-fifth session, Supplement No. 17, (A/45/17)*, chap. I, sect. B.
- ³³⁴ For detailed information, see *Yearbook of the United Nations Commission on International Trade Law*, vol. XXI: 1990 (United Nations publication, Sales No. E.91.V.6).
- ³³⁵ A/CN.9/332 and Add.1-7.
- ³³⁶ *Ibid.*, Add.8.
- ³³⁷ A/CN.9/328.
- ³³⁸ A/CN.9/329.
- ³³⁹ A/CN.9/331.
- ³⁴⁰ A/CN.9/WG.V/WP.24, with a commentary in A/CN.9/WG.V/WP.25.
- ³⁴¹ A/CN.9/330.
- ³⁴² A/CN.9/WG.II/WP.65.
- ³⁴³ A/CN.9/333.
- ³⁴⁴ A/CN.9/336.
- ³⁴⁵ A/CN.9/339.
- ³⁴⁶ Adopted without a vote.
- ³⁴⁷ See A/45/736.
- ³⁴⁸ General Assembly resolutions 3201 (S-VI) and 3202 (S-VI).
- ³⁴⁹ General Assembly resolution 3362 (S-VII).
- ³⁵⁰ Adopted by a recorded vote of 116 to 9, with 26 abstentions.
- ³⁵¹ See A/45/730.
- ³⁵² *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.67/16, p. 208.
- ³⁵³ Adopted without a vote.
- ³⁵⁴ See A/45/731.
- ³⁵⁵ United Nations, *Treaty Series*, vol. 75, p. 2.
- ³⁵⁶ *Ibid.*, vol. 1125, p. 3.
- ³⁵⁷ Adopted by a recorded vote of 148 to 1.
- ³⁵⁸ See A/45/732.
- ³⁵⁹ A/45/455 and Add.1-3.
- ³⁶⁰ Adopted without a vote.
- ³⁶¹ See A/45/733.
- ³⁶² A/45/430 and Corr.1 and Add.1-3.
- ³⁶³ See A/C.6/45/L.5.
- ³⁶⁴ Adopted without a vote.
- ³⁶⁵ See A/45/738.
- ³⁶⁶ *Official Records of the General Assembly, Forty-fourth session, Supplement No. 10 (A/44/10)*, chap. II.
- ³⁶⁷ *Ibid.*, *Forty-fifth Session, Sixth Committee*, 42nd meeting, and corrigendum.
- ³⁶⁸ For the report of the Special Committee, see *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 33 (A/45/33)*.
- ³⁶⁹ A/AC.182/L.60/Rev.1.
- ³⁷⁰ A/AC.182/L.62/Rev.1.
- ³⁷¹ A/AC.182/L.66.
- ³⁷² A/CN.182/L.64.
- ³⁷³ A/CN.182/L.43/Rev.5.

³⁷⁴ *Official Records of the General Assembly, Forty-fourth Session, Supplement No. 33 (A/44/33)*.

³⁷⁵ A/CN.182/L.67.

³⁷⁶ A/CN.182/L.65.

³⁷⁷ Adopted by a recorded vote of 147 to none, with one abstention.

³⁷⁸ See A/45/739.

³⁷⁹ Adopted by a recorded vote of 149 to none, with one abstention.

³⁸⁰ See A/45/739.

³⁸¹ Adopted without a vote.

³⁸² See A/45/898.

³⁸³ A/C.5/45/10 and Corr.1.

³⁸⁴ General Assembly resolution 22 A (I); see also United Nations, *Treaty Series*, vol. 1, p. 15.

³⁸⁵ General Assembly resolution 179 (II); see also United Nations, *Treaty Series*, vol. 33, p. 261.

³⁸⁶ *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, I.C.J. Reports 1989*, p. 177.

³⁸⁷ Adopted without a vote.

³⁸⁸ For detailed information, see *Official Record of the General Assembly, Forty-Fifth Session, Supplement No. 14 (A/45/14)*; the report covers the period July 1988–June 1990.

³⁸⁹ Adopted without a vote.

³⁹⁰ See A/45/855.

³⁹¹ A/45/634.

³⁹² 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.

³⁹³ ILC, 77th session, 1990, *Record of Proceedings*, No. 2; No. 16; No. 19, pp. 1-2; English, French, Spanish. ILO *Official Bulletin*, vol. LXXIII, 1990, Series A, No. 2, pp. 121-122.

³⁹⁴ ILO *Official Bulletin*, vol. LXXIII, 1990, Series A, No. 2, pp. 71-79; English, French, Spanish. Regarding preparatory work, see: *First discussion* — Safety in the Use of Chemicals at Work, ILC, 76th Session (1989), report VI (1) and report VI (2); 57 and 114 pages respectively; Arabic, Chinese, English, French, German, Russian, Spanish. See also ILC, 76th session (1989), *Record of Proceedings*, No. 23; No. 31, pp. 18-22; English, French, Spanish. *Second discussion* — Safety in the Use of Chemicals at Work, ILC, 77th session (1990), report V (1), report V (2A) and report V (2B); 19, 87 and 38 pages respectively; Arabic, Chinese, English, French, German, Russian, Spanish. See also ILC, 77th session (1990), *Record of Proceedings*, No. 24; No. 30; No. 31, p. 6; English, French, Spanish.

³⁹⁵ ILO *Official Bulletin*, vol. LXXIII, 1990, Series A, No. 2, pp. 84-92; English, French, Spanish. See also ILC, 77th session (1990), *Record of Proceedings*, No. 24, pp. 15-23, 29-34; No. 30; No. 31, p. 6; English, French, Spanish.

³⁹⁶ ILO *Official Bulletin*, vol. LXXIII, 1990, Series A, No. 2, pp. 79-84; English, French, Spanish. Regarding preparatory work, see: *First discussion* — Night Work, ILC, 76th session (1989), report V (1) and report V (2); 83 and 140 pages respectively; Arabic, Chinese, English, French, German, Russian, Spanish. See also ILC, 76th session (1989), *Record of Proceedings*, No. 30; No. 33; English, French, Spanish. *Second discussion* — Night Work, ILC, 77th session (1990), report IV (1), report IV (2A), report IV (2B); 13, 109, 26 pages respectively; Arabic, Chinese, English, French, German, Russian, Spanish. See also ILC, 77th session (1990), *Record of Proceedings*, No. 26; No. 31, pp. 1 and 6, pp. 16-17; No. 33, pp. 1 and 16; English, French, Spanish.

³⁹⁷ ILO *Official Bulletin*, vol. LXXIII, 1990, Series A, No. 2, pp. 92-96; English, French, Spanish. See also ILC, 77th session (1990), *Record of Proceedings*, No. 26; No. 31, pp. 1-6, 16-17; No. 33, p. 1; English, French, Spanish.

³⁹⁸ ILO *Official Bulletin*, vol. LXXIII, 1990, Series A, No. 2, pp. 96-98; English, French, Spanish. See also ILC, 77th session (1990), *Record of Proceedings*, No. 26; No. 31, pp. 1-9, pp. 16-17; No. 33, p. 16; English, French, Spanish.

³⁹⁹ This report has been published as report III (Part 4) to the 77th session of the Conference and comprises two volumes: vol. A: General Report and Observations concerning particular Countries, report III(4A), 500 p.; English, French, Spanish. Vol. B: General Survey of the Reports on the Merchant Shipping (Minimum Standards) Convention (No. 147) and the Merchant Shipping (Improvement of Standards) Recommendation (No. 155), 1976, report III(4B), 187 p.; English, French, Spanish.

⁴⁰⁰ ILO *Official Bulletin*, vol. LXXIII, 1990, Series B, No. 1.

⁴⁰¹ *Ibid.*, vol. LXXIII, 1990, Series B, No. 2.

⁴⁰² *Ibid.*, vol. LXXIII, 1990, Series B, No. 3.

⁴⁰³ Unpublished documents WHO/HLE/90.1 and WHO/HLE/90.2.

⁴⁰⁴ The text of the ICSID Convention is reproduced in the United Nations *Juridical Yearbook*, 1966, p. 196.

⁴⁰⁵ United Nations, *Treaty Series*, vol. 828, p. 3.

⁴⁰⁶ *Ibid.*, vol. 828, p. 221.

⁴⁰⁷ *Ibid.*, vol. 828, p. 389.

⁴⁰⁸ League of Nations, *Treaty Series*, vol. 74, p. 343.

⁴⁰⁹ United Nations, *Treaty Series*, vol. 550, p. 45; vol. 828, p. 191; and vol. 1154, p. 89.

⁴¹⁰ *Ibid.*, vol. 496, p. 43.

⁴¹¹ *Ibid.*, vol. 828, p. 435.

⁴¹² United Kingdom *Treaty Series*, 78 (1978).

⁴¹³ *Ibid.*, 113 (1975).

⁴¹⁴ United Nations, *Treaty Series*, vol. 866, p. 67.

⁴¹⁵ *International Legal Materials*, vol. XVII, p. 285.

⁴¹⁶ For the details of this cooperation, see "Activities in the Year 1990, Report of the Director General", WIPO document AB/XXII/8, paras. 338-610.

⁴¹⁷ WIPO document SD/CE/I/2.

⁴¹⁸ WIPO document SD/CE/II/2.

⁴¹⁹ WIPO documents SD/CE/I/3 and SD/CE/II/3.

⁴²⁰ WIPO documents HL/CE/VIII/2, 3 and 4.

⁴²¹ WIPO documents HL/CE/VIII/26 and 31.

⁴²² WIPO documents PLT/PM/2 and 4.

⁴²³ WIPO documents PLT/PM/5 and 8.

⁴²⁴ WIPO documents HL/CM/1, HL/CM/INF/1 Rev. and HL/CM/INF/2.

⁴²⁵ WIPO document P/EC/XXVI/3, paragraph 9.

⁴²⁶ WIPO documents HM/CE/II/2 and 3.

⁴²⁷ WIPO document GEO/CE/I/2.

⁴²⁸ WIPO document GEO/CE/3.

⁴²⁹ WIPO document CE/MPC/III/2.

⁴³⁰ WIPO document CE/MPC/III/3.

⁴³¹ The Yemen Arab Republic and the People's Democratic Republic of Yemen were non-original members of IFAD in Category III. Their membership was approved by the first session of the Governing Council on 13 December 1977 and became effective on 6 February 1979 and 13 December 1977, respectively, once they had deposited their instruments of accession to the Agreement Establishing IFAD with the Secretary-General of the United Nations.

⁴³² EB 90/40/R.33.

⁴³³ IDB.6/23/Rev.1.

⁴³⁴ IDB.7/36.

⁴³⁵ GC.1/INF.6.

⁴³⁶ IDB.2/Dec.28.

⁴³⁷ IDB.5/Dec.40.

⁴³⁸ Annual report of UNIDO 1990 (IDB.8/10), appendix J.

⁴³⁹ Reproduced in IAEA document INFCIRC/274/Rev.1; see also United Kingdom Command Paper No. 8112.

⁴⁴⁰ Reproduced in IAEA document INFCIRC/335.

⁴⁴¹ Reproduced in IAEA document INFCIRC/336.

⁴⁴² United Nations, *Treaty Series*, vol. 1063, p. 265; the text of the Convention is also published in *IAEA Legal Series*, No. 4.

⁴⁴³ GC (XXXIV)/RES/529.

⁴⁴⁴ Reproduced in IAEA document INFCIRC/390.

⁴⁴⁵ Reproduced in IAEA document INFCIRC/387.

⁴⁴⁶ Reproduced in IAEA document INFCIRC/379.

⁴⁴⁷ Reproduced in IAEA document INFCIRC/381.

⁴⁴⁸ Reproduced in IAEA document INFCIRC/376.

⁴⁴⁹ Reproduced in IAEA document INFCIRC/361.

⁴⁵⁰ Reproduced in IAEA document INFCIRC/193.

⁴⁵¹ IAEA also applies safeguards to nuclear facilities at Taiwan, Province of China.

⁴⁵² Reproduced in IAEA document INFCIRC/386.

⁴⁵³ Reproduced in IAEA document INFCIRC/377.