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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

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) Major trends and developments

(i) *Chemical weapons*

In 1992, the Conference on Disarmament concluded the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction,[1] which was the first disarmament agreement negotiated within a multilateral framework that provided for the elimination of an entire category of weapons of mass destruction.

Commending the Convention, the General Assembly, by its resolution 47/39 of 30 November 1992,[2] also called upon all States to sign and to become parties to the Convention, and further called upon all States to ensure the effective implementation of the comprehensive and verifiable agreement, thereby enhancing cooperative multilateralism as a basis for international peace and security.

(ii) *Non-proliferation*

As regards the nuclear non-proliferation regime, the remaining two nuclear-weapon States, China and France, acceded to the Treaty on the Non-Proliferation of Nuclear Weapons,[3] and an agreement was reached to begin preparations for the 1995 Conference. By its resolution 47/52 A of 9 December 1992,[4] the General Assembly, noting the provisions of article X, paragraph 2, of the Treaty, requiring the holding of a conference twenty-five years after the entry into force of the Treaty, to decide whether the Treaty shall continue in force indefinitely or shall be extended for an additional fixed period or periods, and recalling that the Treaty had entered into force on 5 March 1970, took note of the decision of the parties to the Treaty on the Non-Proliferation of Nuclear Weapons to form a preparatory committee for a conference to review the operation of the Treaty and to decide on its extension.

On the question of effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons, no progress was made in 1992, mainly because of continuing differences of perception as to the real security interests and concerns of the few nuclear-weapon States and the large number of non-nuclear-weapon States. By its resolution 47/50 of 9 December 1992,[5] the General Assembly, noting the support expressed in the Conference on Disarmament and in the General Assembly for the

elaboration of an international convention to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons, as well as the difficulties pointed out in evolving a common approach acceptable to all, appealed to all States, especially the nuclear-weapon States, to work actively towards an early 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. As far as bacteriological (biological) weapons were concerned, and adoption and extension of confidence-building measures and the ongoing discussion on potential verification measures were seen as contributing to the effective implementation of the Biological Weapons Convention[6] and, thus, preventing the eventual proliferation of such weapons. The question of the transfer of chemical weapons and of components for the manufacturing of such weapons had been addressed extensively in the negotiations on the Chemical Weapons Convention and it was hoped that, after its entry into force, this issue would be effectively addressed by the mechanism (the Organization for the Prohibition of the Chemical Weapons) to be established under the Convention.

(iii) *Regional disarmament*

At its forty-seventh session, the General Assembly paid considerable attention to the question of regional disarmament and adopted five resolutions on the subject. By its resolution 47/52 G of 9 December 1992,[7] the General Assembly affirmed that comprehensive political and peaceful settlement of regional conflicts and disputes could contribute to the reduction of tension and the promotion of regional peace, security and stability as well as of arms limitation and disarmament, and encouraged States of the same region to examine the possibility of creating, on their own initiative, regional mechanisms and/or institutions for the establishment of measures in the framework of an effort of regional disarmament or for the prevention and the peaceful settlement of disputes and conflicts with the assistance, if requested, of the United Nations.

The General Assembly affirmed, in its resolution 47/52 J of 9 December 1992,[8] that global and regional approaches to disarmament complemented each other and should therefore be pursued simultaneously to promote regional and international peace and security, and called upon States to conclude agreements, wherever possible, for nuclear non-proliferation, disarmament and confidence-building measures at regional and subregional levels.

Furthermore, by its resolution 47/52 I of 9 December 1992,[9] the General Assembly, considering that, along with the new political situation in Europe, the positive results of the negotiations on confidence- and security-building measures, as well as those on conventional armaments and forces, had considerably increased confidence and security in Europe, thereby contributing to international peace and security, welcomed in particular: (a) the decision of the States signatories of the Treaty on Conventional Armed Forces in Europe[10] to implement the Treaty, as well as the recent Concluding Act of the Negotiations on Personnel Strength of Conventional Armed Forces in Europe; (b) the signature of the Treaty on Open Skies,[11] with the adoption of the Declaration on the Treaty on Open Skies; (c) the adoption, by the States participating in the Conference on Security and Cooperation in Europe, of a new significant set of confidence- and security-building measures; and (d) the decision of the States participating in the Conference on Security and Cooperation in Europe, at the Helsinki sum-

mit meeting, to establish a Forum for Security Cooperation. In its resolution 47/53 B of 9 December 1992,[12] the General Assembly endorsed the purposes and principles of the Treaty of Amity and Cooperation in South-East Asia[13] and its provisions for the pacific settlement of regional disputes and for regional co-operation in order to achieve peace, amity and friendship among the peoples of South-East Asia, in accordance with the Charter of the United Nations, which were consistent with the current climate of enhancing regional and international cooperation. Finally, by its resolution 47/53 F of 15 December 1992,[14] the General Assembly, convinced that the resources released by disarmament, including regional disarmament, could be devoted to economic and social development and to the protection of the environment for the benefit of all peoples, in particular those of the developing countries, supported and encouraged efforts aimed at promoting confidence-building measures at regional and subregional levels in order to ease regional tensions and to further disarmament and non-proliferation measures at regional and subregional levels in Central Africa.

(iv) *Transparency, confidence-building and the Arms Register*

At its forty-seventh session the General Assembly adopted four resolutions on the subject. By its resolution 47/45 of 9 December 1992,[15] the General Assembly took note of the report of the Secretary-General on actions to implement the recommendations in the in-depth study on the role of the United Nations in the field of verification, and encouraged Member States to continue to give active consideration to the recommendations contained in the concluding chapter of the study and to assist the Secretary-General in their implementation where appropriate.

On the issue of transparency in armaments, by its resolution of 47/52 L of 15 December 1992,[16] the General Assembly, continuing to take the view that an enhanced level of transparency in armaments contributed greatly to confidence-building and security among States and that the establishment of the United Nations Register of Conventional Arms, contained in the annex to resolution 46/36 L of December 1991, constituted an important step forward in the promotion of transparency in military matters, encouraged Member States to inform the Secretary-General of their national arms import and export policies, legislation and administrative procedures, both as regards authorization of arms transfers and prevention of illicit transfers, in conformity with its resolution 46/36 L, and reaffirmed its request to the Secretary-General to prepare a report on the continuing operation of the Register and its further development with the assistance of a group of governmental experts convened in 1994 on the basis of equitable geographical representation.

In its resolution 47/54 D of 9 December 1992,[17] the General Assembly recommended the guidelines for appropriate types of confidence-building measures to all States for implementation, taking fully into account the specific political, military and other conditions prevailing in a region, on the basis of initiatives and with the agreement and cooperation of the States of the region concerned, and appealed to all States to consider the widest possible use of confidence-building measures in their international relations, including bilateral, regional and global negotiations, as an important step towards prevention of conflict and, in times of political tension and crisis, as an instrument for peaceful settlement of conflicts.

Finally, the General Assembly, in its resolution 47/54 B of 9 December 1992,[18] endorsed the guidelines and recommendations for objective information on military matters as adopted by the Disarmament Commission at its 1992 substantive session, and recommended the guidelines and recommendations to all States for implementation, fully taking into account specific political, military and other conditions prevailing in a region, on the basis of initiatives and with the agreement of the States of the region concerned.

(v) *Nuclear arms limitation, disarmament and related issues*

Nuclear arms limitation, nuclear disarmament, prevention of nuclear war and other questions related to nuclear weapons continued to be a focus of attention at bilateral, regional and multilateral levels. The positive developments in the nuclear field and especially the radical reductions of the nuclear arsenals of the two major nuclear Powers enabled the General Assembly to adopt at its forty-seventh session, for the first time, a consensus resolution on bilateral nuclear-arms negotiations. However, these positive developments were not reflected in the multilateral efforts to bring about a comprehensive nuclear-test-ban treaty.

In the General Assembly, two resolutions were adopted on nuclear testing. By its resolution 47/47 of 9 December 1992,[19] the General Assembly reaffirmed its conviction that a treaty to achieve the prohibition of all nuclear-test explosions by all States in all environments for all time was a matter of priority which would constitute an essential step in order to prevent the qualitative improvement and development of nuclear weapons and their further proliferation, and which would contribute to the process of nuclear disarmament, and urged, therefore, all States to seek to achieve the early discontinuance of all nuclear-test explosions for all time. Secondly, in its resolution 47/46, also of 9 December 1992,[20] the General Assembly called upon all parties to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water[21] to participate in, and to contribute to the success of, the Amendment Conference 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 urged all States, especially those nuclear-weapon States which had not yet done so, to adhere to the Treaty.

As far as the other nuclear-weapon-related issues were concerned, such as the cessation of the nuclear-arms race and the prevention of nuclear war, the General Assembly adopted three traditional resolutions: on a ban of the production of fissionable material; on a nuclear-arms freeze; and on a convention banning the use of nuclear weapons. The latter two resolutions, supported mostly by developing countries, continued to be opposed by many Western countries, as those two concepts, in their view, had become outdated.

The General Assembly also adopted a number of resolutions reflecting decisions at the regional level. By its resolution 47/76 of 15 December 1992,[22] the General Assemby 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, and requested the Secretary-General, in consultation with the Organization of African Unity, to take appropriate action to enable the Group

of Experts designated by the United Nations in cooperation with the Organization of African Unity to meet during 1993 at Harare, in order to draw up a draft treaty or convention on the denuclearization of Africa, and to submit the report of the Group of Experts to the General Assembly at its forty-eighth session. By its resolution 47/48 of 9 December 1992,[23] the General Assembly, bearing in mind the consensus it had reached at its thirty-fifth session that the establishment of a nuclear-weapon-free zone in the region of the Middle East would greatly enhance international peace and security, invited all countries of the region, pending the establishment of a nuclear-weapon-free zone in the region of the Middle East, to declare their support for establishing such a zone, consistent with paragraph 63 (d) of the Final Document of the Tenth Special Session of the General Assembly,[24] and to deposit those declarations with the Security Council.

The General Assembly, by its resolution 47/49 of 9 December 1992,[25] reaffirmed its endorsement, in principle, of the concept of a nuclear-weapon-free zone in South Asia, and once again urged the States of South Asia to continue to make all possible efforts to establish a nuclear-weapon-free zone in South Asia and to refrain, in the meantime, from any action contrary to that objective. By its resolution 47/59 of 9 December 1992,[26] the General Assembly, desirous of continuing its efforts for the establishment of a zone of peace in the Indian Ocean, and considering the need for new alternative approaches for the establishment of such a zone, requested the Ad Hoc Committee on the Indian Ocean to consider new alternative approaches leading to the achievement of the goals contained in the Declaration of the Indian Ocean as a Zone of Peace[27] and as considered at the Meeting of the Littoral and Hinterland States of the Indian Ocean held in July 1979,[28] taking into account the changing international situation.

Furthermore, by its resolution 47/61 of 9 December 1992,[29] the General Assembly welcomed the concrete steps taken by several countries during the current year, the twenty-fifth anniversary of the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco),[30] for the consolidation of the regime of military denuclearization established by that Treaty, and urged all Latin American and Caribbean States to take speedily the necessary measures to attain the full entry into force of the Treaty of Tlatelolco and, in particular, the States in respect of which the Treaty was open for signature and ratification immediately to carry out the corresponding formalities so that they might become parties to that international instrument, thus contributing to the consolidation of the regime established by that Treaty.

Finally, in its resolution 47/55 of 9 December 1992,[31] the General Assembly, concerned at the cooperation between Israel and South Africa in the military nuclear fields, deplored Israel's refusal to renounce possession of nuclear weapons; urged Israel to accede to the Treaty on the Non-Proliferation of Nuclear Weapons; and (3) reaffirmed that Israel should promptly apply Security Council resolution 487 (1981), in which the Council, *inter alia*, had requested it to place all its nuclear facilities under International Atomic Energy Agency safeguards and to refrain from attacking or threatening to attack nuclear facilities.

(vi) *Conventional armaments and advanced technology*

Efforts to curb the conventional arms race and to prevent the development of more sophisticated weapons and weapons systems continued in 1992. Al-

though progress had been made at the regional level in the reduction of conventional weapons, there had been no discernible progress at the global level. The debate focused on the control of exports and imports of arms, including illicit traffic; transfers of weapons, with special emphasis on the transfer of high technology with military applications; and restriction of the use of inhumane weapons.

At its forty-seventh session, the General Assembly, by its resolution 47/44 of 9 December 1992,[32] invited Member States to undertake additional efforts to apply science and technology for disarmament-related purposes and to make disarmament-related technologies available to interested States, and also invited Member States to widen multilateral dialogue, bearing in mind the proposal for seeking universally acceptable international norms or guidelines that would regulate international transfers of high technology with military applications. Furthermore, by its resolution 47/43 of 9 December 1992,[33] the General Assembly, noting the results of the United Nations Conference on New Trends in Science and Technology: Implications for International Peace and Security, held at Sendai, Japan, from 16 to 19 April 1990,[34] and recognizing, in this regard, the need for the scientific and policy communities to work together in dealing with the complex implications of technological change, took note of the report of the Secretary-General entitled "Scientific and technological developments and their impact on international security."[35]

The General Assembly, by its resolution 47/56 of 9 December 1992,[36] noted with satisfaction that an increasing number of States had either signed, ratified, accepted or acceded to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects,[37] which had been opened for signature in New York on 10 April 1981; also noted with satisfaction that, consequent upon the fulfilment of the conditions set out in article 5 of the Convention, the Convention and the three Protocols annexed thereto had entered into force on 2 December 1983; and urged all States that had not yet done so to exert their best endeavours to become parties to the Convention and the Protocols annexed thereto as early as possible, as well as successor States to take appropriate action so as ultimately to obtain universality of adherence.

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

The question of the prevention of an arms race in outer space continued to be considered within and outside the United Nations. In all forums dealing with the question, concern continued to be expressed about the danger of the militarization of outer space and the importance and urgency of preventing an arms race in that environment. There was increasing agreement on the relevance of confidence-building measures and of greater transparency and openness in space.

The General Assembly, by its resolution 47/51 of 9 December 1992,[38] reaffirmed the importance and urgency of preventing an arms race in outer space and the readiness of all States to contribute to that common objective, in conformity with the provisions of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies,[39] and also reaffirmed its recognition, as stated in the report of the Ad Hoc Committee on the Prevention of an Arms Race in Outer Space, that the legal regime applicable to outer space by itself did not guaran-

tee the prevention of an arms race in outer space, that that legal regime played a significant role in the prevention of an arms race in that environment, that there was a need to consolidate and reinforce that regime and enhance its effectiveness, and that it was important strictly to comply with existing agreements, both bilateral and multilateral.

(viii) *Environmental issues*

Questions related to the impact of various military activities of States on the environment, whether in the course of war or in peacetime, continued to be the subject of debate within and outside the United Nations in 1992. By its resolution 47/37 of 25 November 1992,[40] the General Assembly urged States to take all measures to ensure compliance with the existing international law applicable to the protection of the environment in times of armed conflict; appealed to all States that had not yet done so to consider becoming parties to the relevant international conventions; and urged States to take steps to incorporate the provisions of international law applicable to the protection of the environment into their military manuals and to ensure that they were effectively disseminated. And by its resolution 47/52 E of 9 December 1992,[41] the General Assembly noted the assessment by the Second Review Conference of the Parties to the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques[42] that the Convention had been effective in preventing military or any other hostile use of any environmental modification techniques between States parties and that its provisions needed to be kept under continuing review and examination in order to ensure their global effectiveness; called upon all States to refrain from military or any other hostile use of any environmental modification techniques; and urged all States that had not already done so to exert their best endeavours to become parties to the Convention as early as possible, and also urged successor States to take appropriate action so as ultimately to obtain universality of adherence.

Moreover, by its resolution 47/52 D of 9 December 1992,[43] the General Assembly called upon all States to take appropriate measures with a view to preventing any dumping of nuclear or radioactive wastes that would infringe upon the sovereignty of States, and requested the Conference on Disarmament to take into account, in the ongoing negotiations for a convention on the prohibition of radiological weapons, radioactive wastes as part of the scope of such a convention.

(*b*) United Nations disarmament activities

(i) *Institutional aspects*

The Disarmament Commission did not consider the question of its functioning as a separate item; however, a number of States expressed the view that further improvement in its reform programme — adopted in 1990 — was necessary, especially in the light of the changing international situation. With respect to the Conference on Disarmament, it was generally agreed that, with the intense work on the Chemical Weapons Convention coming to an end, attention should be focused on questions of agenda and membership.

At its forty-seventh session, the General Assembly, by its resolution 47/54 A of 9 December 1992,[44] took note of the annual report of the Disarmament Commission, and, *inter alia*, recalled the role of the Commission as the specialized, deliberative body within the United Nations multilateral disarmament

machinery that allowed for in-depth deliberations on specific disarmament issues, leading to the submission of concrete recommendations on those issues. By its resolution 47/54 E, also of 9 December 1992,[45] the General Assembly, having considered the report of the Conference on Disarmament, *inter alia*, reaffirmed the role of the Conference as the single multilateral disarmament negotiating forum of the international community.

2. OTHER POLITICAL AND SECURITY QUESTIONS

(*a*) Membership in the United Nations

In 1992, the following States were admitted to membership in the United Nations:

State	*Decision of the General Assembly resolution*	*Date of adoption*
Republic of Moldova	46/223	2 March 1992
Kazakhstan	46/224	2 March 1992
Kyrgyzstan	46/225	2 March 1992
Uzbekistan	46/226	2 March 1992
Armenia	46/227	2 March 1992
Tajikistan	46/228	2 March 1992
Turkmenistan	46/229	2 March 1992
Azerbaijan	46/230	2 March 1992
San Marino	46/231	2 March 1992
Slovenia	46/236	22 May 1992
Bosnia and Herzegovina	46/237	22 May 1992
Croatia	46/238	22 May 1992
Georgia	46/241	31 July 1992

By the end of 1992, 179 States had become Members of the United Nations.

(*b*) Implementation of the Declaration on the Strengthening of International Security[46]

By its resolution 47/60 A of 9 December 1992,[47] adopted on the recommendation of the First Committee,[48] the General Assembly reaffirmed the continuing validity of the Declaration on the Strengthening of International Security, and called upon all States to contribute effectively to its implementation; emphasized that, until an enduring and stable universal peace based on a comprehensive, viable and readily implementable structure of international security was established, peace, the achievement of disarmament and the settlement of disputes by peaceful means continued to be the first and foremost task of the international community; recognized, among other things, the validity of the concepts of confidence-building measures, particularly in regions of high tension, balanced security at lower levels of armaments and armed forces, as well as the elimination of destabilizing military capabilities and imbalances; stressed the urgent need for more balanced development of the world economy and for redressing the current asymmetry and inequality in economic and technological development between the developed and developing countries, which were basic prerequisites for the strengthening of international peace and security; and

reaffirmed that the democratization of international relations was an imperative necessity, and stressed its belief that the United Nations offered the best framework for the promotion of that goal. Furthermore, by its resolution 47/60 B of the same date,[49] adopted also on the recommendation of the First Committee,[50] the General Assembly noting with appreciation that the Secretary-General had submitted ideas and proposals in his report entitled "An Agenda for Peace"[51], in particular dealing with the strengthening and enhancement of the effectiveness, within the framework and in accordance with the provisions of the Charter of the United Nations, of the United Nations potential in the area of preventive diplomacy, peacemaking, peacekeeping and post-conflict peace-building; noting also the ideas and proposals of the Secretary-General contained in his report entitled "New dimensions of arms regulation and disarmament in the post-cold war era,[52] the General Assembly decided to continue consideration of the question of maintenance of international security, taking into account new international realities and new tasks before the United Nations in the area of strengthening collective efforts to maintain international peace and security; and invited all Member States to provide their views on further consideration of the question of maintenance of international security, taking into account, *inter alia*, appropriate provisions of the above-mentioned reports of the Secretary-General.

(*c*) An Agenda for Peace: preventive diplomacy and related matters

By its resolution 47/120 of 18 December 1992,[53] the General Assembly, recalling the statement of 31 January 1992, adopted at the conclusion of the first meeting held by the Security Council at the level of Heads of States and Government,[54] in which the Secretary-General was invited to prepare, for circulation to the States Members of the United Nations by 1 July 1992, an "analysis and recommendations on ways of strengthening and making more efficient within the framework and provisions of the Charter the capacity of the United Nations for preventive diplomacy, for peacemaking and for peacekeeping"; welcoming the timely presentation of the forward-looking report of the Secretary-General entitled "An Agenda for Peace",[51] in response to the summit meeting of the Security Council, as a set of recommendations that deserved close examination by the international community; stressing the need for international action to strengthen the socio-economic development of Member States as one of the means of enhancing international peace and security and, in that regard, recognizing the need to complement "An Agenda for Peace" with "An Agenda for Development"; (I) emphasizing the need to promote the peaceful settlement of disputes, invited Member States to seek solutions to their disputes at an early stage through such peaceful means as provided for in the Charter of the United Nations; and encouraged the Secretary-General and the Security Council to engage at an early stage in close and continuous consultation in order to develop, on a case-by-case basis, an appropriate strategy for the peaceful settlement of specific disputes, including the participation of other organs, organizations and agencies of the United Nations system, as well as regional arrangements and organizations as appropriate, and invited the Secretary-General to report to the General Assembly on such consultations; (II) recognizing the need to strengthen the capacity of the United Nations for early warning, collection of information and analysis, encouraged the Secretary-General to set up an adequate early-warning mechanism for situations which were likely to endanger the maintenance of international peace and security, in close cooperation with Member States and United Nations agencies, as well as regional arrangements and organ-

izations, as appropriate, making use of the information available to those organizations and/or received from Member States, and to keep Member States informed of the mechanism as established; (III) recalling statements made by the President of the Security Council, on behalf of the Council, on 29 October[55] and 30 November 1992[56] and its own resolutions 1967 (XVIII) of 16 December 1963, 2104 (XX) of 20 December 1965, 2182 (XXI) of 12 December 1966 and 2329 (XXII) of 18 December 1967 on the question of methods of fact-finding; (IV) recognizing that the application of appropriate confidence-building measures, consistent with national security needs, would promote mutual confidence and good faith, which were essential to reducing the likelihood of conflicts between States and enhancing prospects for the peaceful settlement of disputes, invited Member States and regional arrangements and organizations to inform the Secretary-General through appropriate channels about their experiences in confidence-building measures in their respective regions; (V) recalling its resolution 45/100 of 14 December 1990 on humanitarian assistance to victims of natural disasters and similar emergency situations and its resolution 46/182 of 19 December 1991 on the strengthening of the coordination of emergency humanitarian assistance of the United Nations, encouraged the Secretary-General to continue to strengthen the capacity of the Organization in order to ensure coordinated planning and execution of humanitarian assistance programmes, drawing upon the specialized skills and resources of all parts of the United Nations system, as well as of those of non-governmental organizations, as appropriate; (VI) recognizing the need for adequate resources in support of the United Nations efforts in preventive diplomacy, invited Member States to provide political and practical support to the Secretary-General in his efforts for the peaceful settlement of disputes, including early warning, fact-finding, good offices and mediation; (VII) emphasizing that, together with the Security Council and the Secretary-General, it had an important role in preventive diplomacy, decided to explore ways and means to support the recommendations of the Secretary-General in his report entitled "An Agenda for Peace" to promote the utilization of the General Assembly, in accordance with the relevant provisions of the Charter of the United Nations, by Member States so as to bring greater influence to bear in pre-empting or containing any situation which was potentially dangerous or might lead to international friction or dispute; and (VIII) bearing in mind that, owing to time constraints, it could not examine all the proposals contained in the report of the Secretary-General entitled "An Agenda for Peace", decided to continue early in 1993 its examination of other recommendations on preventive diplomacy and related matters contained in "An Agenda for Peace", including preventive deployment, demilitarized zones and the International Court of Justice, as well as implementation of the provisions of Article 50 of the Charter of the United Nations.

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

The Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space held its thirty-first session at the United Nations Office at Geneva from 23 March to 10 April 1992.[57]

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, with the aim of finalizing the draft set of principles at the current session", the Legal Subcommittee re-established its Working Group on the item.

The Subcommittee had before it working papers submitted at its previous session in 1991, which were set out in section A of annex IV to the Subcommittee's 1991 report[58] and at the current session by the delegations of Canada and Germany.[59] The Working Group agreed to work on the basis of the above-mentioned working paper which contained a composite text of draft principles. The Working Group also agreed that after recording consensus on the entire text, necessary linguistic and editorial refinements should be effected. The Subcommittee took note with appreciation of the report of its Working Group[60] and agreed that the "working non-papers" contained in the above-mentioned report might be considered at the next session of the Committee on the Peaceful Uses of Outer Space, as a contribution to meeting the aim set out in General Assembly resolution 46/45 of 9 December 1991 for finalizing the draft set of principles relevant to the use of nuclear power sources in outer space.

The Subcommittee also re-established its Working Group on the item entitled "Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union". The Subcommittee had before it working papers submitted at its previous sessions under this agenda item as well as a working paper entitled "Questions concerning the legal regime for aerospace objects"[61] submitted at its current session by the delegation of the Russian Federation. The Working 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 hand, separately. In summing up the discussion on the question of the definition and delimitation of outer space, the Working Group agreed with the Chairman's view that the debate on the working paper submitted by the Russian Federation was of a preliminary character and did not prejudge the positions of various delegations with regard to the appropriateness of delimiting airspace and outer space. With regard to the question of the geostationary orbit, the debate had been based on the "working non-paper" circulated during the Subcommittee's thirtieth session in 1991[62] and various oral proposals. The Chairman of the Working Group shared the view expressed by some delegations that a new document — official or unofficial — reflecting the results of the discussion, which interested delegations might wish to submit would facilitate the future work of the Group on the question of the geostationary orbit. The Subcommittee took note with appreciation of the report of the Working Group.[63]

The Subcommittee re-established as well its Working Group on the item entitled "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 received from States Members of the United Nations[64] containing their views as to the priority of subjects under that 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 I 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 as well as replies received from Member States[65] 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 shall be carried out for the benefit and in the interests of all countries, taking into particular account the needs of developing countries. The Subcommittee further had before it a paper submitted by the Chairman of the Working Group on that particular agenda item as a background paper,[66] which summarized in an analytical manner the views and information contained in the above-mentioned replies of Member States, as well as a working paper submitted by the delegations of Argentina, Brazil, Chile, Mexico, Nigeria, Pakistan, the Philippines, Uruguay and Venezuela[67] and a working paper submitted by the delegation of Nigeria.[68] The Working Group conducted a preliminary exchange of ideas on the provisions of the former working paper, entitled "Principles regarding international cooperation in the exploration and utilization of outer space for peaceful purposes", which took the form of a draft General Assembly resolution, with an annex. The Subcommittee took note with appreciation of the report of the Working Group.[69]

The Committee on the Peaceful Uses of Outer Space at its thirty-fifth session, held at United Nations Headquarters from 15 to 26 June 1992, took note with appreciation of the report of the Legal Subcommittee on the work of its thirty-first session and made recommendations concerning the agenda of the Subcommittee at its thirty-second session.[70]

With regard to the item entitled "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 at the current session", the Committee was able to reach consensus on the basis of the Chairman's text and recommended that the General Assembly, at its forty-seventh session, adopt the set of principles relevant to the use of nuclear power sources in outer space, attached as an annex to the Committee's report.[71] Noting the need for early review and possible revision of the principles, the Committee recommended that the Legal Subcommittee, through its Working Group, should consider the question of early review and possible revision of the principles in question.

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

The Committee also considered, in accordance with paragraph 30 of General Assembly resolution 46/45, the item entitled "Spin-off benefits of space technology: review of current status". The Committee agreed that the spin-offs of space technology were yielding substantial benefits in many fields and noted that the importance of spin-off benefits was growing rapidly. The Committee took note of working papers on spin-off benefits of space technology submitted by China[72] and the Russian Federation.[73] The Committee also recommended that the United Nations Programme on Space Applications consider including in at least one of its training courses, seminars or expert meetings each year the subject of the promotion of spin-off benefits from space technology, and recognized the unique opportunity for the Committee to play an active role, where possible, in implementing relevant recommendations of the United Nations Conference on Environment and Development.

At its forty-seventh session, by its resolution 47/67 of 14 December 1992,[74] adopted on the recommendation of the Special Political Committee,[75] the General Assembly endorsed the report of the Committee on the Peaceful Uses of Outer Space;[76] invited States that had not yet become parties to the interna-

tional treaties governing the uses of outer space[77] to give consideration to ratifying or acceding to those treaties; endorsed the recommendations of the Committee that the Legal Subcommittee, at its thirty-second session, should continue, through its working groups, its consideration of: (a) the question of early review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space; (b) 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; (c) 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; and requested the Committee to continue to consider, at its thirty-sixth session, its agenda item entitled "Spin-off benefits of space technology: review of current status". Furthermore, by its resolution 47/68 of the same date,[78] adopted also on the recommendation of the Special Political Committee,[79] the General Assembly adopted the following Principles Relevant to the Use of Nuclear Power Sources in Outer Space:

Principle 1. Applicability of international law

Activities involving the use of nuclear power sources in outer space shall be carried out in accordance with international law, including in particular the Charter of the United Nations and the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.[80]

Principle 2. Use of terms

1. For the purpose of these Principles, the terms "launching State" and "State launching" mean the State which exercises jurisdiction and control over a space object with nuclear power sources on board at a given point in time relevant to the principle concerned.

2. For the purpose of principle 9, the definition of the term "launching State" as contained in that principle is applicable.

3. For the purposes of principle 3, the terms "foreseeable" and "all possible" describe a class of events or circumstances whose overall probability of occurrence is such that it is considered to encompass only credible possibilities for purposes of safety analysis. The term "general concept of defence-in-depth" when applied to nuclear power sources in outer space refers to the use of design features and mission operations in place of or in addition to active systems, to prevent or mitigate the consequences of system malfunctions. Redundant safety systems are not necessarily required for each individual component to achieve this purpose. Given the special requirements of space use and of varied missions, no particular set of systems or features can be specified as essential to achieve this objective. For the purposes of paragraph 2 (*d*) of principle 3, the term "made critical" does not include actions such as zero-power testing which are fundamental to ensuring system safety.

Principle 3. Guidelines and criteria for safe use

In order to minimize the quantity of radioactive material in space and the risks involved, the use of nuclear power sources in outer space shall be restricted to those space missions which cannot be operated by non-nuclear energy sources in a reasonable way.

1. *General goals for radiation protection and nuclear safety*

(*a*) States launching space objects with nuclear power sources on board shall endeavour to protect individuals, populations and the biosphere against radiological hazards. The design and use of space objects with nuclear power sources on board shall en-

sure, with a high degree of confidence, that the hazards, in foreseeable operational or accidental circumstances, are kept below acceptable levels as defined in paragraphs 1 (*b*) and (*c*).

Such design and use shall also ensure with high reliability that radioactive material does not cause a significant contamination of outer space.

(*b*) During the normal operation of space objects with nuclear power sources on board, including re-entry from the sufficiently high orbit as defined in paragraph 2 (*b*), the appropriate radiation protection objective for the public recommended by the International Commission on Radiological Protection shall be observed. During such normal operation there shall be no significant radiation exposure.

(*c*) To limit exposure in accidents, the design and construction of the nuclear power source systems shall take into account relevant and generally accepted international radiological protection guidelines.

Except in cases of low-probability accidents with potentially serious radiological consequences, the design for the nuclear power source systems shall, with a high degree of confidence, restrict radiation exposure to a limited geographical region and to individuals to the principal limit of 1 mSv in a year. It is permissible to use a subsidiary dose limit of 5 mSv in a year for some years, provided that the average annual effective dose equivalent over a lifetime does not exceed the principle limit of 1 mSv in a year.

The probability of accidents with potentially serious radiological consequences referred to above shall be kept extremely small by virtue of the design of the system.

Future modifications of the guidelines referred to in this paragraph shall be applied as soon as practicable.

(*d*) Systems important for safety shall be designed, constructed and operated in accordance with the general concept in defence-in-depth. Pursuant to this concept, foreseeable safety-related failures or malfunctions must be capable of being corrected or counteracted by an action or a procedure, possibly automatic.

The reliability of systems important for safety shall be ensured, *inter alia*, by redundancy, physical separation, functional isolation and adequate independence of their components.

Other measures shall also be taken to raise the level of safety.

2. *Nuclear reactors*

(*a*) Nuclear reactors may be operated:

(i) On interplanetary missions;

(ii) In sufficiently high orbits as defined in paragraph 2 (*b*);

(iii) In low-Earth orbits if they are stored in sufficiently high orbits after the operational part of their mission.

(*b*) The sufficiently high orbit is one in which the orbital lifetime is long enough to allow for a sufficient decay of the fission products to approximately the activity of the actinides. The sufficiently high orbit must be such that the risks to existing and future outer-space missions and of collision with other space objects are kept to a minimum. The necessity for the parts of a destroyed reactor also to attain the required decay time before re-entering the Earth's atmosphere shall be considered in determining the sufficiently high orbit altitude.

(*c*) Nuclear reactors shall use only highly enriched uranium 235 as fuel. The design shall take into account the radioactive decay of the fission and activation products.

(*d*) Nuclear reactors shall not be made critical before they have reached their operating orbit or interplanetary trajectory.

(*e*) The design and construction of the nuclear reactor shall ensure that it cannot become critical before reaching the operating orbit during all possible events, including rocket explosion, re-entry, impact on ground or water, submersion in water or water intruding into the core.

(*f*) In order to reduce significantly the possibility of failures in satellites with nuclear reactors on board during operations in an orbit with a lifetime less than in the sufficiently high orbit (including operations for transfer into the sufficiently high orbit), there shall be a highly reliable operational system to ensure an effective and controlled disposal of the reactor.

3. *Radioisotope generators*

(*a*) Radioisotope generators may be used for interplanetary missions and other missions leaving the gravity field of the Earth. They may also be used in Earth orbit if, after conclusion of the operational part of their mission, they are stored in a high orbit. In any case ultimate disposal is necessary.

(*b*) Radioisotope generators shall be protected by a containment system that is designed and constructed to withstand the heat and aerodynamic forces of re-entry in the upper atmosphere under foreseeable orbital conditions, including highly elliptical or hyperbolic orbits where relevant. Upon impact, the containment system and the physical form of the isotope shall ensure that no radioactive material is scattered into the environment so that the impact area can be completely cleared of radioactivity by a recovery operation.

Principle 4. Safety assessment

1. A launching State as defined in principle 2, paragraph 1, at the time of launch shall, prior to the launch, through cooperative arrangements, where relevant, with those which have designed, constructed or manufactured the nuclear power source, or will operate the space object, or from whose territory or facility such an object will be launched, ensure that a thorough and comprehensive safety assessment is conducted. This assessment shall cover as well all relevant phases of the mission and shall deal with all systems involved, including the means of launching, the space platform, the nuclear power source and its equipment and the means of control and communication between ground and space.

2. This assessment shall respect the guidelines and criteria for safe use contained in principle 3.

3. Pursuant to article XI of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, the results of this safety assessment, together with, to the extent feasible, an indication of the approximate intended time-frame of the launch, shall be made publicly available prior to each launch, and the Secretary-General of the United Nations shall be informed on how States may obtain such results of the safety assessment as soon as possible prior to each launch.

Principle 5. Notification of re-entry

1. Any State launching a space object with nuclear power sources on board shall in a timely fashion inform States concerned in the event this space object is malfunctioning with a risk of re-entry of radioactive materials to the Earth. The information shall be in accordance with the following format:

(*a*) *System parameters*:

(i) Name of launching State or States, including the address of the authority which may be contacted for additional information or assistance in case of accident;

(ii) International designation;

(iii) Date and territory or location of launch;

(iv) Information required for best prediction of orbit lifetime, trajectory and impact region;

(v) General function of spacecraft;

(*b*) *Information on the radiological risk of nuclear power source(s)*:

(i) Type of nuclear power source: radioisotopic/reactor;

(ii) The probable physical form, amount and general radiological characteristics of the fuel and contaminated and/or activated components likely to reach the ground. The term "fuel" refers to the nuclear material used as the source of heat or power.

This information shall also be transmitted to the Secretary-General of the United Nations.

2. The information, in accordance with the format above, shall be provided by the launching State as soon as the malfunction has become known. It shall be updated as frequently as practicable and the frequency of dissemination of the updated information shall increase as the anticipated time of re-entry into the dense layers of the Earth's atmosphere approaches so that the international community will be informed of the situation and will have sufficient time to plan for any national response activities deemed necessary.

3. The updated information shall also be transmitted to the Secretary-General of the United Nations with the same frequency.

Principle 6. Consultations

States providing information in accordance with principle 5 shall, as far as reasonably practicable, respond promptly to requests for further information or consultations sought by other States.

Principle 7. Assistance to States

1. Upon the notification of an expected re-entry into the Earth's atmosphere of a space object containing a nuclear power source on board and its components, all States possessing space monitoring and tracking facilities, in the spirit of international cooperation, shall communicate the relevant information that they may have available on the malfunctioning space object with a nuclear power source on board to the Secretary-General of the United Nations and the State concerned as promptly as possible to allow States that might be affected to assess the situation and take any precautionary measures deemed necessary.

2. After re-entry into the Earth's atmosphere of a space object containing a nuclear power source on board and its components:

(*a*) The launching State shall promptly offer and, if requested by the affected State, provide promptly the necessary assistance to eliminate actual and possible harmful effects, including assistance to identify the location of the area of impact of the nuclear power source on the Earth's surface, to detect the re-entered material and to carry out retrieval or clean-up operations;

(*b*) All States, other than the launching State, with relevant technical capabilities and international organizations with such technical capabilities shall, to the extent possible, provide necessary assistance upon request by an affected State.

In providing the assistance in accordance with subparagraphs (*a*) and (*b*) above, the special needs of developing countries shall be taken into account.

Principle 8. Responsibility

In accordance with article VI of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, States shall bear international responsibility for national activities involving the use of nuclear power sources in outer space, whether such activities are carried on by governmental agencies or by non-governmental entities, and for assuring that such national activities are carried out in conformity with that Treaty and the recommendations contained in these Principles. When activities in outer space involving the use of nuclear power sources are carried on by an international organization, responsibility for compliance with the aforesaid Treaty and the recommendations contained in these Principles shall be borne both by the international organization and by the States participating in it.

Principle 9. Liability and compensation

1. In accordance with article VII of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other

Celestial Bodies, and the provisions of the Convention on International Liability for Damage Caused by Space Objects,[81] each State which launches or procures the launching of a space object and each State from whose territory or facility a space object is launched shall be internationally liable for damage caused by such space objects or their component parts. This fully applies to the case of such a space object carrying a nuclear power source on board. Whenever two or more States jointly launch such a space object, they shall be jointly and severally liable for any damage caused, in accordance with article V of the above-mentioned Convention.

2. The compensation that such States shall be liable to pay under the aforesaid Convention for damage shall be determined in accordance with international law and the principles of justice and equity, in order to provide such reparation in respect of the damage as will restore the person, natural or juridical, State or international organization on whose behalf a claim is presented to the condition which would have existed if the damage had not occurred.

3. For the purposes of this principle, compensation shall include reimbursement of the duly substantiated expenses for search, recovery and clean-up operations, including expenses for assistance received from third parties.

Principle 10. Settlement of disputes

Any dispute resulting from the application of these Principles shall be resolved through negotiations or other established procedures for the peaceful settlement of disputes, in accordance with the Charter of the United Nations.

Principle 11. Review and revision

These Principles shall be reopened for revision by the Committee on the Peaceful Uses of Outer Space no later than two years after their adoption.

(*e*) Question of Antarctica

By its resolution 47/57 of 9 December 1992,[82] adopted on the recommendation of the First Committee,[83] the General Assembly took note of the reports of the Secretary-General[84] on the report of the Sixteenth Antarctic Treaty Consultation Meeting and on the participation of the apartheid minority regime of South Africa in meetings of the Antarctic Treaty Consultative Parties; welcomed the report of the Secretary-General on the state of the environment in Antarctica;[85] expressed its regret — while noting the cooperation of some United Nations specialized agencies and programmes at the Sixteenth Antarctic Treaty Consultative Meeting — that, despite the numerous resolutions adopted by the General Assembly, the Secretary-General or his representative had not been invited to the meetings of the Antarctic Treaty Consultative Parties, and urged once again the Consultative Parties to invite the Secretary-General or his representative to their future meetings; called upon the Consultative Parties to prevent South Africa from participating fully in their meetings pending the attainment of a non-racial democratic government in that country; welcomed the commitment made by the Antarctic Treaty Consultative Parties under chapter 17 of Agenda 21, adopted by the United Nations Conference on Environment and Development,[86] as provided for in article III of the Antarctic Treaty,[87] to continue: (*a*) to ensure that data and information resulting from scientific research activities conducted in Antarctica were freely available to the international community; (*b*) to enhance access of the international scientific community and specialized agencies of the United Nations to such data and information, including the encouragement of periodic seminars and symposia; urged the Antarctic Treaty Consultative Parties to establish monitoring and implementation mechanisms to ensure compliance with the provisions of the 1991 Madrid Protocol on

Environmental Protection;[88] reiterated its call, in welcoming the ban on prospecting and mining in and around Antarctica for the next fifty years by Antarctic Treaty Consultative Parties in accordance with the Madrid Protocol, for the ban to be made permanent; also reiterated its call that any move at drawing up an international convention to establish a nature reserve or world park in Antarctica and its dependent and associated ecosystems must be negotiated with the full participation of the international community; and urged the international community to ensure that all activities in Antarctica were carried out exclusively for the purpose of peaceful scientific investigation and that all such activities would ensure the maintenance of international peace and security and the protection of the Antarctic environment and were for the benefit of all mankind.

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

(*a*) Environmental questions

Third special session of the Governing Council of the United Nations Environment Programme[89]

The third special session of the Governing Council of the United Nations Environment Programme was held at UNEP headquarters, Nairobi, from 3 to 5 February 1992.

By its decision SS.III/2,[90] the Governing Council noted with appreciation the consolidated report of the Secretary-General on the implementation of General Assembly resolution 44/227 of 22 December 1989 on further substantive follow-up of Assembly resolutions 42/186 and 42/187 of 11 December 1987,[91] in which the Assembly, respectively, adopted the Environmental Perspective to the Year 2000 and Beyond and welcomed the report of the World Commission on Environment and Development,[92] the above-mentioned consolidated report being based on information received from thirty-eight Governments and twenty-nine organizations and bodies of the United Nations system; and welcomed the positive development in international cooperation on global environmental issues since the adoption by the General Assembly in 1987 of resolutions 42/186 and 42/187, through, *inter alia*, the adoption of the London Amendment of the Montreal Protocol on Substances that Deplete the Ozone Layer,[93] the adoption of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal,[94] the negotiations for global treaties on climate change and biodiversity, the numerous regional initiatives, as well as the preparations for the United Nations Conference on Environment and Development. Furthermore, by its decision SS.III/3, the Governing Council took note with appreciation of the analytical report of the Executive Director entitled "The state of the environment (1972-1992): saving our planet — Challenges and hopes";[95] expressed its deep concern at the evidence adduced in the report and elsewhere of the continued deterioration of the state of the environment in many areas; and requested the Executive Director to bring his analytical report on the state of the environment (1972-1992) and the decision to the attention of the United Nations Conference on Environment and Development, through its Secretary-General and the Preparatory Committee for the Conference at its fourth session.

Fourth Session of the Preparatory Committee for the United Nations Conference on Environment and Development[96]

The Preparatory Committee for the United Nations Conference on Environment and Development held its fourth session at United Nations Headquarters from 2 March to 3 April 1992.

Decisions adopted by the Committee included decisions related to legal matters. In particular, by its decisions, two working groups, established by the Preparatory Committee at its organizational session, and the third working group, established by the Preparatory Committee at its second session, met in conjunction with the session of the Preparatory Committee; their reports are contained in annexes II, III and IV to the Committee's report.

Working Group III considered the question of the survey of existing agreements and instruments and its follow-up, principles on general rights and obligations, and other legal, institutional and related matters, as well as legal and institutional aspects of cross-sectoral issues, including those referred to Working Group III by Working Group I and Working Group II and the Plenary of the Preparatory Committee.

By its decision 4/4, the Committee approved, subject to further consideration of the bracketed parts, draft chapters of Agenda 21 submitted by the Chairman of Working Group III which included the texts on international institutional arrangements[97] and on legal instruments and mechanisms;[98] by its decision 4/7, the Preparatory Committee decided to transmit to UNCED for further consideration the non-legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forests;[99] and by its decision 4/10, the Preparatory Committee decided to transmit to UNCED for further consideration the proposal of the Chairman of the Preparatory Committee on the Rio Declaration on Environment and Development.[100]

United Nations Conference on Environment and Development

The United Nations Conference on Environment and Development was held at Rio de Janeiro, Brazil, from 3 to 14 June 1992, in conformity with General Assembly resolution 45/211 of 21 December 1990 and decision 46/468 of 13 April 1992.

Pre-Conference consultations open to all States invited to participate in the Conference were held at Rio de Janeiro on 1 and 2 June 1992 to consider a number of procedural and organizational matters. The report on the consultations[101] was submitted to the Conference and the recommendations contained in it were accepted as the basis for the organization of the Conference's work.

After the general debate, the Conference considered the report of its Main Committee.[102]

The Summit segment of the Conference was held on 12 and 13 June 1992. One hundred and two heads of State or Government or their personal representatives made statements.[103]

On 14 June 1992, by its resolution 1, entitled "Adoption of texts on environment and development", the Conference noted that the United Nations Framework Convention on Climate Change [104] and the Convention on Biological Diversity[105] had been opened for signature at UNCED and had been signed

at Rio de Janeiro by 154 States and one regional economic integration organization and 156 States and one regional economic integration organization respectively, and adopted the Rio Declaration on Environment and Development, Agenda 21 and the Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests, which were annexed to the resolution.[106] On the same date, the Conference also adopted resolutions 2 and 3.

ANNEX I

Rio Declaration on Environment and Development

The United Nations Conference on Environment and Development,

Having met at Rio de Janeiro from 3 to 14 June 1992,

Reaffirming the Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm on 16 June 1972,[107] and seeking to build upon it.

With the goal of establishing a new and equitable global partnership through the creation of new levels of cooperation among States, key sectors of societies and people,

Working towards international agreements which respect the interests of all and protect the integrity of the global environmental and developmental system,

Recognizing the integral and interdependent nature of the Earth, our home,

Proclaims that:

Principle 1

Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

Principle 2

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Principle 3

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

Principle 4

In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

Principle 5

All States and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.

Principle 6

The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority. International actions in the field of environment and development should also address the interests and needs of all countries.

Principle 7

States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.

Principle 8

To achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies.

Principle 9

States should cooperate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies.

Principle 10

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Principle 11

States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.

Principle 12

States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus.

Principle 13

States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

Principle 14

States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.

Principle 15

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

Principle 16

National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

Principle 17

Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.

Principle 18

States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so afflicted.

Principle 19

States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.

Principle 20

Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.

Principle 21

The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all.

Principle 22

Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

Principle 23

The environment and natural resources of people under oppression, domination and occupation shall be protected.

Principle 24

Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary.

Principle 25

Peace, development and environmental protection are interdependent and indivisible.

Principle 26

States shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations.

Principle 27

States and people shall cooperate in good faith and in a spirit of partnership in the fulfilment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development.

ANNEX II
Agenda 21

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Chapter 38
INTERNATIONAL INSTITUTIONAL ARRANGEMENTS
BASIS FOR ACTION

38.1. The mandate of the United Nations Conference on Environment and Development emanates from General Assembly resolution 44/228, in which the Assembly, *inter alia*, affirmed that the Conference should elaborate strategies and measures to halt and reverse the effects of environmental degradation in the context of increased national and international efforts to promote sustainable and environmentally sound development in all countries and that the promotion of economic growth in developing countries is essential to address problems of environmental degradation. The intergovernmental follow-up to the Conference process shall be within the framework of the United Nations system, with the General Assembly being the supreme policy-making forum that would provide overall guidance to Governments, the United Nations system and relevant treaty bodies. At the same time, Governments, as well as regional economic and technical cooperation organizations, have a responsibility to play an important role in the follow-up to the Conference. Their commitments and actions should be adequately supported by the United Nations system and multilateral financial institutions. Thus, national and international efforts would mutually benefit from one another.

38.2. In fulfilling the mandate of the Conference, there is a need for institutional arrangements within the United Nations system in conformity with, and providing input into, the restructuring and revitalization of the United Nations in the economic, social and related fields, and the overall reform of the United Nations, including ongoing changes in the Secretariat. In the spirit of reform and revitalization of the United Nations system, implementation of Agenda 21 and other conclusions of the Conference shall be based on an action- and result-oriented approach and consistent with the principles of universality, democracy, transparency, cost-effectiveness and accountability.

38.3. The United Nations system, with its multisectoral capacity and the extensive experience of a number of specialized agencies in various spheres of international cooperation in the field of environment and development, is uniquely positioned to assist Governments to establish more effective patterns of economic and social development with a view to achieving the objectives of Agenda 21 and sustainable development.

38.4. All agencies of the United Nations system have a key role to play in the implementation of Agenda 21 within their respective competence. To ensure proper coordination and avoid duplication in the implementation of Agenda 21, there should be an effective division of labour between various parts of the United Nations system based on their terms of reference and comparative advantages. Member States, through relevant governing bodies, are in a position to ensure that these tasks are carried out properly. In order to facilitate evaluation of agencies' performance and promote knowledge of their activities, all bodies of the United Nations system should be required to elaborate and publish reports of their activities concerning the implementation of Agenda 21 on a regular basis.

Serious and continuous reviews of their policies, programmes, budgets and activities will also be required.

38.5. The continued active and effective participation of non-governmental organizations, the scientific community and the private sector, as well as local groups and communities, are important in the implementation of Agenda 21.

38.6. The institutional structure envisaged below will be based on agreement on financial resources and mechanisms, technology transfer, the Rio Declaration and Agenda 21. In addition, there has to be an effective link between substantive action and financial support, and this requires close and effective cooperation and exchange of information between the United Nations system and the multilateral financial institutions for the follow-up of Agenda 21 within the institutional arrangement.

OBJECTIVES

38.7. The overall objective is the integration of environment and development issues at national, subregional, regional and international levels, including in the United Nations system institutional arrangements.

38.8. Specific objectives shall be:

(*a*) To ensure and review the implementation of Agenda 21 so as to achieve sustainable development in all countries;

(*b*) To enhance the role and functioning of the United Nations system in the field of environment and development. All relevant agencies, organizations and programmes of the United Nations system should adopt concrete programmes for the implementation of Agenda 21 and also provide policy guidance for United Nations activities or advice to Governments, upon request, within their areas of competence;

(*c*) To strengthen cooperation and coordination on environment and development in the United Nations system;

(*d*) To encourage interaction and cooperation between the United Nations system and other intergovernmental and non-governmental subregional, regional and global institutions and non-governmental organizations in the field of environment and development;

(*e*) To strengthen institutional capabilities and arrangements required for the effective implementation, follow-up and review of Agenda 21;

(*f*) To assist in the strengthening and coordination of national, subregional and regional capacities and actions in the areas of environment and development;

(*g*) To establish effective cooperation and exchange of information between United Nations organs, organizations, programmes and the multilateral financial bodies, within the institutional arrangements for the follow-up of Agenda 21;

(*h*) To respond to continuing and emerging issues relating to environment and development;

(*i*) To ensure that any new institutional arrangements would support revitalization, clear division of responsibilities and the avoidance of duplication in the United Nations system and depend to the maximum extent possible upon existing resources.

INSTITUTIONAL STRUCTURE

A. *General Assembly*

38.9. The General Assembly, as the highest intergovernmental mechanism, is the principal policy-making and appraisal organ on matters relating to the follow-up of the Conference. The Assembly would organize a regular review of the implementation of Agenda 21. In fulfilling this task, the Assembly could consider the timing, format and organizational aspects of such a review. In particular, the Assembly could consider holding

a special session not later than 1997 for the overall review and appraisal of Agenda 21, with adequate preparations at a high level.

B. *Economic and Social Council*

38.10. The Economic and Social Council, in the context of its role under the Charter *vis-à-vis* the General Assembly and the ongoing restructuring and revitalization of the United Nations in the economic, social and related fields, would assist the General Assembly by overseeing system-wide coordination in the implementation of Agenda 21 and making recommendations in this regard. In addition, the Council would undertake the task of directing system-wide coordination and integration of environmental and developmental aspects of United Nations policies and programmes and would make appropriate recommendations to the General Assembly, specialized agencies concerned and Member States. Appropriate steps should be taken to obtain regular reports from specialized agencies on their plans and programmes related to the implementation of Agenda 21, pursuant to Article 64 of the Charter of the United Nations. The Economic and Social Council should organize a periodic review of the work of the Commission on Sustainable Development envisaged in paragraph 38.11, as well as of system-wide activities to integrate environment and development, making full use of its high-level and coordination segments.

C. *Commission on Sustainable Development*

38.11 In order to ensure the effective follow-up of the Conference, as well as to enhance international cooperation and rationalize the intergovernmental decision-making capacity for the integration of environment and development issues and to examine the progress in the implementation of Agenda 21 at the national, regional and international levels, a high-level Commission on Sustainable Development should be established in accordance with Article 68 of the Charter of the United Nations. This Commission would report to the Economic and Social Council in the context of the Council's role under the Charter *vis-à-vis* the General Assembly. It would consist of representatives of States elected as members with due regard to equitable geographical distribution. Representatives of non-member States of the Commission would have observer status. The Commission should provide for the active involvement of organs, programmes and organizations of the United Nations system, international financial institutions and other relevant intergovernmental organizations, and encourage the participation of non-governmental organizations, including industry and the business and scientific communities. The first meeting of the Commission should be convened no later than 1993. The Commission should be supported by the secretariat envisaged in paragraph 38.19. Meanwhile the Secretary-General of the United Nations is requested to ensure adequate interim administrative secretariat arrangements.

38.12. The General Assembly, at its forty-seventh session, should determine specific organizational modalities for the work of this Commission, such as its membership, its relationship with other intergovernmental United Nations bodies dealing with matters related to environment and development, and the frequency, duration and venue of its meetings. These modalities should take into account the ongoing process of revitalization and restructuring of the work of the United Nations in the economic, social and related fields, in particular measures recommended by the General Assembly in resolutions 45/264 of 13 May 1991 and 46/235 of 13 April 1992 and other relevant Assembly resolutions. In this respect, the Secretary-General of the United Nations, with the assistance of the Secretary-General of the United Nations Conference on Environment and Development, is requested to prepare for the Assembly a report with appropriate recommendations and proposals.

38.13. The Commission on Sustainable Development should have the following functions:

(*a*) To monitor progress in the implementation of Agenda 21 and activities related to the integration of environmental and developmental goals throughout the United Na-

tions system through analysis and evaluation of reports from all relevant organs, organizations, programmes and institutions of the United Nations system dealing with various issues of environment and development, including those related to finance;

(*b*) To consider information provided by Governments, including, for example, information in the form of periodic communications or national reports regarding the activities they undertake to implement Agenda 21, the problems they face, such as problems related to financial resources and technology transfer, and other environment and development issues they find relevant;

(*c*) To review the progress in the implementation of the commitments contained in Agenda 21, including those related to provision of financial resources and transfer of technology;

(*d*) To receive and analyse relevant input from competent non-governmental organizations, including the scientific and private sectors, in the context of the overall implementation of Agenda 21;

(*e*) To enhance the dialogue, within the framework of the United Nations, with non-governmental organizations and the independent sector, as well as other entities outside the United Nations system;

(*f*) To consider, where appropriate, information regarding the progress made in the implementation of environmental conventions, which could be made available by the relevant Conferences of Parties;

(*g*) To provide appropriate recommendations to the General Assembly through the Economic and Social Council on the basis of an integrated consideration of the reports and issues related to the implementation of Agenda 21;

(*h*) To consider, at an appropriate time, the results of the review to be conducted expeditiously by the Secretary-General of all recommendations of the Conference for capacity-building programmes, information networks, task forces and other mechanisms to support the integration of environment and development at regional and subregional levels.

38.14. Within the intergovernmental framework, consideration should be given to allowing non-governmental organizations, including those related to major groups, particularly women's groups, committed to the implementation of Agenda 21 to have relevant information available to them, including information, reports and other data produced within the United Nations system.

D. *The Secretary-General*

38.15. Strong and effective leadership on the part of the Secretary-General is crucial, since he/she would be the focal point of the institutional arrangements within the United Nations system for the successful follow-up to the Conference and for the implementation of Agenda 21.

E. *High-level inter-agency coordination mechanism*

38.16. Agenda 21, as the basis for action by the international community to integrate environment and development, should provide the principal framework for coordination of relevant activities within the United Nations system. To ensure effective monitoring, coordination and supervision of the involvement of the United Nations system in the follow-up to the Conference, there is a need for a coordination mechanism under the direct leadership of the Secretary-General.

38.17. This task should be given to the Administrative Committee on Coordination (ACC), headed by the Secretary-General. ACC would thus provide a vital link and interface between the multilateral financial institutions and other United Nations bodies at the highest administrative level. The Secretary-General should continue to revitalize the functioning of the Committee. All heads of agencies and institutions of the United Nations system shall be expected to cooperate with the Secretary-General fully in order to make ACC work effectively in fulfilling its crucial role and ensure successful implementation

of Agenda 21. ACC should consider establishing a special task force, subcommittee or sustainable development board, taking into account the experience of the Designated Officials for Environmental Matters (DOEM) and the Committee of International Development Institutions on Environment (CIDIE), as well as the respective roles of UNEP and UNDP. Its report should be submitted to the relevant intergovernmental bodies.

F. *High-level advisory body*

38.18. Intergovernmental bodies, the Secretary-General and the United Nations system as a whole may also benefit from the expertise of a high-level advisory board consisting of eminent persons knowledgeable about environment and development, including relevant sciences, appointed by the Secretary-General in their personal capacity. In this regard, the Secretary-General should make appropriate recommendations to the General Assembly at its forty-seventh session.

G. *Secretariat support structure*

38.19. A highly qualified and competent secretariat support structure within the United Nations Secretariat, drawing, *inter alia*, on the expertise gained in the Conference preparatory process is essential for the follow-up to the Conference and the implementation of Agenda 21. This secretariat support structure should provide support to the work of both intergovernmental and inter-agency coordination mechanisms. Concrete organizational decisions fall within the competence of the Secretary-General as the chief administrative officer of the Organization, who is requested to report on the provisions to be made, covering staffing implications, as soon as practicable, taking into account gender balance as defined in Article 8 of the Charter of the United Nations and the need for the best use of existing resources in the context of the current and ongoing restructuring of the United Nations Secretariat.

H. *Organs, programmes and organizations of the United Nations system*

38.20. In the follow-up to the Conference, in particular the implementation of Agenda 21, all relevant organs, programmes and organizations of the United Nations system will have an important role within their respective areas of expertise and mandates in supporting and supplementing national efforts. Coordination and mutual complementarity of their efforts to promote integration of environment and development can be enhanced by encouraging countries to maintain consistent positions in the various governing bodies.

1. *United Nations Environment Programme*

38.21. In the follow-up to the Conference, there will be a need for an enhanced and strengthened role for UNEP and its Governing Council. The Governing Council should, within its mandate, continue to play its role with regard to policy guidance and coordination in the field of the environment, taking into account the development perspective.

38.22. Priority areas on which UNEP should concentrate include the following:

(*a*) Strengthening its catalytic role in stimulating and promoting environmental activities and considerations throughout the United Nations system;

(*b*) Promoting international cooperation in the field of environment and recommending, as appropriate, policies to this end;

(*c*) Developing and promoting the use of such techniques as natural resource accounting and environmental economics;

(*d*) Environmental monitoring and assessment, both through improved participation by the United Nations system agencies in the Earthwatch programme and expanded relations with private scientific and non-governmental research institutes; strengthening and making operational its early-warning function;

(*e*) Coordination and promotion of relevant scientific research with a view to providing a consolidated basis for decision-making;

(*f*) Dissemination of environmental information and data to Governments and to organs, programmes and organizations of the United Nations system;

(*g*) Raising general awareness and action in the area of environmental protection through collaboration with the general public, non-governmental entities and intergovernmental institutions;

(*h*) Further development of international environmental law, in particular conventions and guidelines, promotion of its implementation, and coordinating functions arising from an increasing number of international legal agreements, *inter alia*, the functioning of the secretariats of the Conventions, taking into account the need for the most efficient use of resources, including possible co-location of secretariats established in the future;

(*i*) Further development and promotion of the widest possible use of environmental impact assessments, including activities carried out under the auspices of specialized agencies of the United Nations system, and in connection with every significant economic development project or activity;

(*j*) Facilitation of information exchange on environmentally sound technologies, including legal aspects, and provision of training;

(*k*) Promotion of subregional and regional cooperation and support to relevant initiatives and programmes for environmental protection, including playing a major contributing and coordinating role in the regional mechanisms in the field of environment identified for the follow-up to the Conference;

(*l*) Provision of technical, legal and institutional advice to Governments, upon request, in establishing and enhancing their national legal and institutional frameworks, in particular, in cooperation with UNDP capacity-building efforts;

(*m*) Support to Governments, upon request, and development agencies and organs in the integration of environmental aspects into their development policies and programmes, in particular through provision of environmental, technical and policy advice during programme formulation and implementation;

(*n*) Further developing assessment and assistance in cases of environmental emergencies.

38.23. In order to perform all of these functions, while retaining its role as the principal body within the United Nations system in the field of environment and taking into account the development aspects of environmental questions, UNEP would require access to greater expertise and provision of adequate financial resources and it would require closer cooperation and collaboration with development organs and other relevant organs of the United Nations system. Furthermore, the regional offices of UNEP should be strengthened without weakening its headquarters in Nairobi, and UNEP should take steps to reinforce and intensify its liaison and interaction with UNDP and the World Bank.

2. *United Nations Development Programme*

38.24. UNDP, like UNEP, also has a crucial role in the follow-up to the United Nations Conference on Environment and Development. Through its network of field offices it would foster the United Nations system's collective thrust in support of the implementation of Agenda 21, at the country, regional, interregional and global levels, drawing on the expertise of the specialized agencies and other United Nations organizations and bodies involved in operational activities. The role of the resident representative/resident coordinator of UNDP needs to be strengthened in order to coordinate the field-level activities of the United Nations operational activities.

38.25. Its role should include the following:

(*a*) Acting as the lead agency in organizing United Nations system efforts towards capacity-building at the local, national and regional levels;

(*b*) Mobilizing donor resources on behalf of Governments for capacity-building in recipient countries and, where appropriate, through the use of the UNDP donor round-table mechanisms;

(*c*) Strengthening its own programmes in support of follow-up to the Conference without prejudice to the fifth programming cycle;

(*d*) Assisting recipient countries, upon request, in the establishment and strengthening of national coordination mechanisms and networks related to activities for the follow-up to the Conference;

(*e*) Assisting recipient countries, upon request, in coordinating the mobilization of domestic financial resources;

(*f*) Promoting and strengthening the role and involvement of women, youth and other major groups in recipient countries in the implementation of Agenda 21.

3. *United Nations Conference on Trade and Development*

38.26. UNCTAD should play an important role in the implementation of Agenda 21 as extended at its eighth session, taking into account the importance of the interrelationships between development, international trade and the environment and in accordance with its mandate in the area of sustainable development.

4. *United Nations Sudano-Sahelian Office*

38.27. The role of the United Nations Sudano-Sahelian Office (UNSO), with added resources that may become available, operating under the umbrella of UNDP and with the support of UNEP, should be strengthened so that it can assume an appropriate major advisory role and participate effectively in the implementation of Agenda 21 provisions related to combating drought and desertification and to land resource management. In this context, the experience gained could be used by all other countries affected by drought and desertification, in particular those in Africa, with special attention to countries most affected or classified as least developed countries.

5. *Specialized agencies of the United Nations system and related organizations and other relevant intergovernmental organizations*

38.28. All specialized agencies of the United Nations system, related organizations and other relevant intergovernmental organizations within their respective fields of competence have an important role to play in the implementation of relevant parts of Agenda 21 and other decisions of the Conference. Their governing bodies may consider ways of strengthening and adjusting activities and programmes in line with Agenda 21, in particular, regarding projects for promoting sustainable development. Furthermore, they may consider establishing special arrangements with donors and financial institutions for project implementation that may require additional resources.

I. *Regional and subregional cooperation and implementation*

38.29. Regional and subregional cooperation will be an important part of the outcome of the Conference. The regional commissions, regional development banks and regional economic and technical cooperation organizations, within their respective agreed mandates, can contribute to this process by:

(*a*) Promoting regional and subregional capacity-building;

(*b*) Promoting the integration of environmental concerns in regional and subregional development policies;

(*c*) Promoting regional and subregional cooperation, where appropriate, regarding transboundary issues related to sustainable development.

38.30. The regional commissions, as appropriate, should play a leading role in coordinating regional and subregional activities by sectoral and other United Nations bodies and shall assist countries in achieving sustainable development. The commissions and regional programmes within the United Nations system, as well as other regional organizations, should review the need for modification of ongoing activities, as appropriate, in light of Agenda 21.

38.31. There must be active cooperation and collaboration among the regional commissions and other relevant organizations, regional development banks, non-governmental

organizations and other institutions at the regional level. UNEP and UNDP, together with the regional commissions, would have a crucial role to play, especially in providing the necessary assistance, with particular emphasis on building and strengthening the national capacity of Member States.

38.32. There is a need for closer cooperation between UNEP and UNDP, together with other relevant institutions, in the implementation of projects to halt environmental degradation or its impact and to support training programmes in environmental planning and management for sustainable development at the regional level.

38.33. Regional intergovernmental technical and economic organizations have an important role to play in helping Governments to take coordinated action in solving environment issues of regional significance.

38.34. Regional and subregional organizations should play a major role in the implementation of the provisions of Agenda 21 related to combating drought and desertification. UNEP, UNDP and UNSO should assist and cooperate with those relevant organizations.

38.35. Cooperation between regional and subregional organizations and relevant organizations of the United Nations system should be encouraged, where appropriate, in other sectoral areas.

J. *National implementation*

38.36. States have an important role to play in the follow-up of the Conference and the implementation of Agenda 21. National level efforts should be undertaken by all countries in an integrated manner so that both environment and development concerns can be dealt with in a coherent manner.

38.37. Policy decisions and activities at the national level, tailored to support and implement Agenda 21, should be supported by the United Nations system upon request.

38.38. Furthermore, States could consider the preparation of national reports. In this context, the organs of the United Nations system should, upon request, assist countries, in particular developing countries. Countries could also consider the preparation of national action plans for the implementation of Agenda 21.

38.39. Existing assistance consortia, consultative groups and round tables should make greater efforts to integrate environmental considerations and related development objectives into their development assistance strategies and should consider reorienting and appropriately adjusting their memberships and operations to facilitate this process and better support national efforts to integrate environment and development.

38.40. States may wish to consider setting up a national coordination structure responsible for the follow-up of Agenda 21. Within this structure, which would benefit from the expertise of non-governmental organizations, submissions and other relevant information could be made to the United Nations.

K. *Cooperation between United Nations bodies and international financial organizations*

38.41. The success of the follow-up to the Conference is dependent upon an effective link between substantive action and financial support, and this requires close and effective cooperation between United Nations bodies and the multilateral financial organizations. The Secretary-General and heads of United Nations programmes, organizations and the multilateral financial organizations have a special responsibility in forging such cooperation, not only through the United Nations high-level coordination mechanism (Administrative Committee on Coordination) but also at regional and national levels. In particular, representatives of multilateral financial institutions and mechanisms, as well as IFAD, should actively be associated with deliberations of the intergovernmental structure responsible for the follow-up to Agenda 21.

L. *Non-governmental organizations*

38.42. Non-governmental organizations and major groups are important partners in the implementation of Agenda 21. Relevant non-governmental organizations, including

the scientific community, the private sector and women's groups, should be given opportunities to make their contributions and establish appropriate relationships with the United Nations system. Support should be provided for developing countries' non-governmental organizations and their self-organized networks.

38.43. The United Nations system, including international finance and development agencies, and all intergovernmental organizations and forums should, in consultation with non-governmental organizations, take measures to:

(*a*) Design open and effective means to achieve the participation of non-governmental organizations, including those related to major groups, in the process established to review and evaluate the implementation of Agenda 21 at all levels and promote their contribution to it;

(*b*) Take into account the findings of review systems and evaluation processes of non-governmental organizations in relevant reports of the Secretary-General to the General Assembly and all pertinent United Nations agencies and intergovernmental organizations and forums concerning implementation of Agenda 21 in accordance with the review process.

38.44. Procedures should be established for an expanded role for non-governmental organizations, including those related to major groups, with accreditation based on the procedures used for the Conference. Such organizations should have access to reports and other information produced by the United Nations system. The General Assembly, at an early stage, should examine ways of enhancing the involvement of non-governmental organizations within the United Nations system in relation to the follow-up process of the Conference.

38.45. The Conference takes note of other institutional initiatives for the implementation of Agenda 21, such as the proposal to establish a non-governmental Earth Council and the proposal to appoint a guardian for future generations, as well as other initiatives taken by local governments and business sectors.

Chapter 39

INTERNATIONAL LEGAL INSTRUMENTS AND MECHANISMS

BASIS FOR ACTION

39.1. The recognition that the following vital aspects of the universal, multilateral and bilateral treaty-making process should be taken into account:

(*a*) The further development of international law on sustainable development, giving special attention to the delicate balance between environmental and developmental concerns;

(*b*) The need to clarify and strengthen the relationship between existing international instruments or agreements in the field of environment and relevant social and economic agreements or instruments, taking into account the special needs of developing countries;

(*c*) At the global level, the essential importance of the participation in and the contribution of all countries, including the developing countries, to treaty making in the field of international law on sustainable development. Many of the existing international legal instruments and agreements in the field of environment have been developed without adequate participation and contribution of developing countries, and thus may require review in order to reflect the concerns and interests of developing countries and to ensure a balanced governance of such instruments and agreements;

(*d*) Developing countries should also be provided with technical assistance in their attempts to enhance their national legislative capabilities in the field of environmental law;

(*e*) Future projects for the progressive development and codification of international law on sustainable development should take into account the ongoing work of the International Law Commission;

(*f*) Any negotiations for the progressive development and codification of international law concerning sustainable development should, in general, be conducted on a universal basis, taking into account special circumstances in the various regions.

OBJECTIVES

39.2. The overall objective of the review and development of international environmental law should be to evaluate and to promote the efficacy of that law and to promote the integration of environment and development policies through effective international agreements or instruments taking into account both universal principles and the particular and differentiated needs and concerns of all countries.

39.3. Specific objectives are:

(*a*) To identify and address difficulties which prevent some States, in particular developing countries, from participating in or duly implementing international agreements or instruments and, where appropriate, to review and revise them with the purposes of integrating environmental and developmental concerns and laying down a sound basis for the implementation of these agreements or instruments;

(*b*) To set priorities for future law-making on sustainable development at the global, regional or subregional level, with a view to enhancing the efficacy of international law in this field through, in particular, the integration of environmental and developmental concerns;

(*c*) To promote and support the effective participation of all countries concerned, in particular developing countries, in the negotiation, implementation, review and governance of international agreements or instruments, including appropriate provision of technical and financial assistance and other available mechanisms for this purpose, as well as the use of differential obligations where appropriate;

(*d*) To promote, through the gradual development of universally and multilaterally negotiated agreements or instruments, international standards for the protection of the environment that take into account the different situations and capabilities of countries. States recognize that environmental policies should deal with the root causes of environmental degradation, thus preventing environmental measures from resulting in unnecessary restrictions to trade. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing international environmental problems should, as far as possible, be based on an international consensus. Domestic measures targeted to achieve certain environmental objectives may need trade measures to render them effective. Should trade policy measures be found necessary for the enforcement of environmental policies, certain principles and rules should apply. These could include, *inter alia*, the principle of non-discrimination; the principle that the trade measure chosen should be the least trade-restrictive necessary to achieve the objectives; an obligation to ensure transparency in the use of trade measures related to the environment and to provide adequate notification of national regulations; and the need to give consideration to the special conditions and development requirements of developing countries as they move towards internationally agreed environmental objectives;

(*e*) To ensure the effective, full and prompt implementation of legally binding instruments and to facilitate timely review and adjustment of agreements or instruments by the parties concerned, taking into account the special needs and concerns of all countries, in particular developing countries;

(*f*) To improve the effectiveness of institutions, mechanisms and procedures for the administration of agreements and instruments;

(*g*) To identify and prevent actual or potential conflicts, particularly between environmental and social/economic agreements or instruments, with a view to ensuring that

such agreements or instruments are consistent. Where conflicts arise they should be appropriately resolved;

(*h*) To study and consider the broadening and strengthening of the capacity of mechanisms, *inter alia*, in the United Nations system, to facilitate, where appropriate and agreed to by the parties concerned, the identification, avoidance and settlement of international disputes in the field of sustainable development, duly taking into account existing bilateral and multilateral agreements for the settlement of such disputes.

ACTIVITIES

39.4. Activities and means of implementation should be considered in the light of the above basis for action and objectives, without prejudice to the right of every State to put forward suggestions in this regard in the General Assembly. These suggestions could be reproduced in a separate compilation on sustainable development.

A. *Review, assessment and fields of action in international law for sustainable development*

39.5. While ensuring the effective participation of all countries concerned, Parties should at periodic intervals review and assess both the past performance and effectiveness of existing international agreements or instruments as well as the priorities for future law making on sustainable development. This may include an examination of the feasibility of elaborating general rights and obligations of States, as appropriate, in the field of sustainable development, as provided by General Assembly resolution 44/228. In certain cases, attention should be given to the possibility of taking into account varying circumstances through differential obligations or gradual application. As an option for carrying out this task, earlier UNEP practice may be followed whereby legal experts designated by Governments could meet at suitable intervals, to be decided later, with a broader environmental and developmental perspective.

39.6. Measures in accordance with international law should be considered to address, in times of armed conflict, large-scale destruction of the environment that cannot be justified under international law. The General Assembly and its Sixth Committee are the appropriate forums to deal with this subject. The specific competence and role of the International Committee of the Red Cross should be taken into account.

39.7. In view of the vital necessity of ensuring safe and environmentally sound nuclear power, and in order to strengthen international cooperation in this field, efforts should be made to conclude the ongoing negotiations for a nuclear safety convention in the framework of the International Atomic Energy Agency.

B. *Implementation mechanisms*

39.8. The parties to international agreements should consider procedures and mechanisms to promote and review their effective, full and prompt implementation. To that effect, States could, *inter alia*:

(*a*) Establish efficient and practical reporting systems on the effective, full and prompt implementation of international legal instruments;

(*b*) Consider appropriate ways in which relevant international bodies, such as UNEP, might contribute towards the further development of such mechanisms.

C. *Effective participation in international law making*

39.9. In all these activities and others that may be pursued in the future, based on the above basis for action and objectives, the effective participation of all countries, in particular developing countries, should be ensured through appropriate provision of technical assistance and/or financial assistance. Developing countries should be given "head-start" support not only in their national efforts to implement international agreements or instruments, but also to participate effectively in the negotiation of new or revised agreements or instruments and in the actual international operation of such agreements or in-

struments. Support should include assistance in building up expertise in international law particularly in relation to sustainable development, and in assuring access to the necessary reference information and scientific/technical expertise.

D. *Disputes in the field of sustainable development*

39.10. In the area of avoidance and settlement of disputes, States should further study and consider methods to broaden and make more effective the range of techniques available at present, taking into account, among others, relevant experience under existing international agreements, instruments or institutions and, where appropriate, their implementing mechanisms such as modalities for dispute avoidance and settlement. This may include mechanisms and procedures for the exchange of data and information, notification and consultation regarding situations that might lead to disputes with other States in the field of sustainable development and for effective peaceful means of dispute settlement in accordance with the Charter of the United Nations, including, where appropriate, recourse to the International Court of Justice, and their inclusion in treaties relating to sustainable development.

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ANNEX III

Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests

PREAMBLE

(*a*) The subject of forests is related to the entire range of environmental and development issues and opportunities, including the right to socio-economic development on a sustainable basis.

(*b*) The guiding objective of these principles is to contribute to the management, conservation and sustainable development of forests and to provide for their multiple and complementary functions and uses.

(*c*) Forestry issues and opportunities should be examined in a holistic and balanced manner within the overall context of environment and development, taking into consideration the multiple functions and uses of forests, including traditional uses, and the likely economic and social stress when these uses are constrained or restricted, as well as the potential for development that sustainable forest management can offer.

(*d*) These principles reflect a first global consensus on forests. In committing themselves to the prompt implementation of these principles, countries also decide to keep them under assessment for their adequacy with regard to further international cooperation on forest issues.

(*e*) These principles should apply to all types of forests, both natural and planted, in all geographical regions and climatic zones, including austral, boreal, subtemperate, temperate, subtropical and tropical.

(*f*) All types of forests embody complex and unique ecological processes which are the basis for their present and potential capacity to provide resources to satisfy human needs as well as environmental values, and as such their sound management and conservation is of concern to the Governments of the countries to which they belong and are of value to local communities and to the environment as a whole.

(*g*) Forests are essential to economic development and the maintenance of all foms of life.

(*h*) Recognizing that the responsibility for forest management, conservation and sustainable development is in many States allocated among federal/national, state/provincial and local levels of government, each State, in accordance with its constitution and/or national legislation, should pursue these principles at the appropriate level of government.

1. (*a*) States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies and have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

(*b*) The agreed full incremental cost of achieving benefits associated with forest conservation and sustainable development requires increased international cooperation and should be equitably shared by the international community.

2. (*a*) States have the sovereign and inalienable right to utilize, manage and develop their forests in accordance with their development needs and level of socio-economic development and on the basis of national policies consistent with sustainable development and legislation, including the conversion of such areas for other uses within the overall socio-economic development plan and based on rational land-use policies.

(*b*) Forest resources and forest lands should be sustainably managed to meet the social, economic, ecological, cultural and spiritual needs of present and future generations. These needs are for forest products and services, such as wood and wood products, water, food, fodder, medicine, fuel, shelter, employment, recreation, habitats for wildlife, landscape diversity, carbon sinks and reservoirs, and for other forest products. Appropriate measures should be taken to protect forests against harmful effects of pollution, including air-borne pollution, fires, pests and diseases, in order to maintain their full multiple value.

(c) The provision of timely, reliable and accurate information on forests and forest ecosystems is essential for public understanding and informed decision-making and should be ensured.

(*d*) Governments should promote and provide opportunities for the participation of interested parties, including local communities and indigenous people, industries, labour, non-governmental organizations and individuals, forest dwellers and women, in the development, implementation and planning of national forest policies.

3. (*a*) National policies and strategies should provide a framework for increased efforts, including the development and strengthening of institutions and programmes for the management, conservation and sustainable development of forests and forest lands.

(*b*) International institutional arrangements, building on those organizations and mechanisms already in existence, as appropriate, should facilitate international cooperation in the field of forests.

(*c*) All aspects of environmental protection and social and economic development as they relate to forests and forest lands should be integrated and comprehensive.

4. The vital role of all types of forests in maintaining the ecological processes and balance at the local, national, regional and global levels through, *inter alia*, their role in protecting fragile ecosystems, watersheds and freshwater resources and as rich storehouses of biodiversity and biological resources and sources of genetic material for biotechnology products, as well as photosynthesis, should be recognized.

5. (*a*) National forest policies should recognize and duly support the identity, culture and the rights of indigenous people, their communities and other communities and forest dwellers. Appropriate conditions should be promoted for these groups to enable them to have an economic stake in forest use, perform economic activities, and achieve and maintain cultural identity and social organization, as well as adequate levels of livelihood and well-being, through, *inter alia*, those land tenure arrangements which serve as incentives for the sustainable management of forests.

(*b*) The full participation of women in all aspects of the management, conservation and sustainable development of forests should be actively promoted.

6. (*a*) All types of forests play an important role in meeting energy requirements through the provision of a renewable source of bio-energy, particularly in devel-

oping countries, and the demands for fuelwood for household and industrial needs should be met through sustainable forest management, afforestation and reforestation. To this end, the potential contribution of plantations of both indigenous and introduced species for the provision of both fuel and industrial wood should be recognized.

(*b*) National policies and programmes should take into account the relationship, where it exists, between the conservation, management and sustainable development of forests and all aspects related to the production, consumption, recycling and/or final disposal of forest products.

(*c*) Decisions taken on the management, conservation and sustainable development of forest resources should benefit, to the extent practicable, from a comprehensive assessment of economic and non-economic values of forest goods and services and of the environmental costs and benefits. The development and improvement of methodologies for such evaluations should be promoted.

(*d*) The role of planted forests and permanent agricultural crops as sustainable and environmentally sound sources of renewable energy and industrial raw material should be recognized, enhanced and promoted. Their contribution to the maintenance of ecological processes, to offsetting pressure on primary/old-growth forest and to providing regional employment and development with the adequate involvement of local inhabitants should be recognized and enhanced.

(*e*) Natural forests also constitute a source of goods and services, and their conservation, sustainable management and use should be promoted.

7. (*a*) Efforts should be made to promote a supportive international economic climate conducive to sustained and environmentally sound development of forests in all countries, which include, *inter alia*, the promotion of sustainable patterns of production and consumption, the eradication of poverty and the promotion of food security.

(*b*) Specific financial resources should be provided to developing countries with significant forest areas which establish programmes for the conservation of forests including protected natural forest areas. These resources should be directed notably to economic sectors which would stimulate economic and social substitution activities.

8. (*a*) Efforts should be undertaken towards the greening of the world. All countries, notably developed countries, should take positive and transparent action towards reforestation, afforestation and forest conservation, as appropriate.

(*b*) Efforts to maintain and increase forest cover and forest productivity should be undertaken in ecologically, economically and socially sound ways through the rehabilitation, reforestation and re-establishment of trees and forests on unproductive, degraded and deforested lands, as well as through the management of existing forest resources.

(*c*) The implementation of national policies and programmes aimed at forest management, conservation and sustainable development, particularly in developing countries, should be supported by international financial and technical cooperation, including through the private sector, where appropriate.

(*d*) Sustainable forest management and use should be carried out in accordance with national development policies and priorities and on the basis of environmentally sound national guidelines. In the formulation of such guidelines, account should be taken, as appropriate and if applicable, of relevant internationally agreed methodologies and criteria.

(*e*) Forest management should be integrated with management of adjacent areas so as to maintain ecological balance and sustainable productivity.

(*f*) National policies and/or legislation aimed at management, conservation and sustainable development of forests should include the protection of ecologically viable representative or unique examples of forests, including primary/old-growth forests, cultural, spiritual, historical, religious and other unique and valued forests of national importance.

(*g*) Access to biological resources, including genetic material, shall be with due regard to the sovereign rights of the countries where the forests are located and to the shar-

ing on mutually agreed terms of technology and profits from biotechnology products that are derived from these resources.

(*h*) National policies should ensure that environmental impact assessments should be carried out where actions are likely to have significant adverse impacts on important forest resources, and where such actions are subject to a decision of a competent national authority.

9. (*a*) The efforts of developing countries to strengthen the management, conservation and sustainable development of their forest resources should be supported by the international community, taking into account the importance of redressing external indebtedness, particularly where aggravated by the net transfer of resources to developed countries, as well as the problem of achieving at least the replacement value of forests through improved market access for forest products, especially processed products. In this respect, special attention should also be given to the countries undergoing the process of transition to market economies.

(*b*) The problems that hinder efforts to attain the conservation and sustainable use of forest resources and that stem from the lack of alternative options available to local communities, in particular the urban poor and poor rural populations who are economically and socially dependent on forests and forest resources, should be addressed by Governments and the international community.

(*c*) National policy formulation with respect to all types of forests should take account of the pressures and demands imposed on forest ecosystems and resources from influencing factors outside the forest sector, and intersectoral means of dealing with these pressures and demands should be sought.

10. New and additional financial resources should be provided to developing countries to enable them to sustainably manage, conserve and develop their forest resources, including through afforestation, reforestation and combating deforestation and forest and land degradation.

11. In order to enable, in particular, developing countries to enhance their endogenous capacity and to better manage, conserve and develop their forest resources, the access to and transfer of environmentally sound technologies and corresponding know-how on favourable terms, including on concessional and preferential terms, as mutually agreed, in accordance with the relevant provisions of Agenda 21, should be promoted, facilitated and financed, as appropriate.

12. (*a*) Scientific research, forest inventories and assessments carried out by national institutions which take into account, where relevant, biological, physical, social and economic variables, as well as technological development and its application in the field of sustainable forest management, conservation and development, should be strengthened through effective modalities, including international cooperation. In this context, attention should also be given to research and development of sustainably harvested non-wood products.

(*b*) National and, where appropriate, regional and international institutional capabilities in education, training, science, technology, economics, anthropology and social aspects of forests and forest management are essential to the conservation and sustainable development of forests and should be strengthened.

(*c*) International exchange of information on the results of forest and forest management research and development should be enhanced and broadened, as appropriate, making full use of education and training institutions, including those in the private sector.

(*d*) Appropriate indigenous capacity and local knowledge regarding the conservation and sustainable development of forests should, through institutional and financial support and in collaboration with the people in the local communities concerned, be recognized, respected, recorded, developed and, as appropriate, introduced in the implementation of programmes. Benefits arising from the utilization of indigenous knowledge should therefore be equitably shared with such people.

13. (*a*) Trade in forest products should be based on non-discriminatory and multilaterally agreed rules and procedures consistent with international trade law and practices. In this context, open and free international trade in forest products should be facilitated.

(*b*) Reduction or removal of tariff barriers and impediments to the provision of better market access and better prices for higher value-added forest products and their local processing should be encouraged to enable producer countries to better conserve and manage their renewable forest resources.

(*c*) Incorporation of environmental costs and benefits into market forces and mechanisms, in order to achieve forest conservation and sustainable development, should be encouraged both domestically and internationally.

(*d*) Forest conservation and sustainable development policies should be integrated with economic, trade and other relevant policies.

(*e*) Fiscal, trade, industrial, transportation and other policies and practices that may lead to forest degradation should be avoided. Adequate policies, aimed at management, conservation and sustainable development of forests, including, where appropriate, incentives, should be encouraged.

14. Unilateral measures, incompatible with international obligations or agreements, to restrict and/or ban international trade in timber or other forest products should be removed or avoided, in order to attain long-term sustainable forest management.

15. Pollutants, particularly air-borne pollutants, including those responsible for acidic deposition, that are harmful to the health of forest ecosystems at the local, national, regional and global levels should be controlled.

RESOLUTION 2

Expression of thanks to the people and Government of Brazil

The United Nations Conference on Environment and Development,

Having met in Rio de Janeiro at the invitation of the Government of Brazil from 3 to 14 June 1992,

1. *Expresses its deep appreciation* to His Excellency the President of Brazil, Mr. Fernando Collor, for his outstanding contribution as President of the United Nations Conference on Environment and Development to the successful outcome of the Conference;

2. *Expresses its profound gratitude* to the Government of Brazil for having made it possible for the Conference to be held in Rio de Janeiro and for the excellent facilities, staff and services so graciously placed at its disposal;

3. *Requests* the Government of Brazil to convey to the State and City of Rio de Janeiro and to the people of Brazil the gratitude of the Conference for the hospitality and warm welcome extended to the participants;

4. *Acknowledges with appreciation* the continuing commitment of the Government of Brazil to the objectives of the Conference and its decision to establish in Rio de Janeiro an International Centre for Sustainable Development.

RESOLUTION 3

Credentials of representatives to the Conference

The United Nations Conference on Environment and Development

Approves the report of the Credentials Committee.[108]

Consideration by the General Assembly

By its resolution 47/190 of 22 December 1992,[109] adopted on the recommendation of the Second Committee,[110] the General Assembly took note with

satisfaction of the report of the United Nations Conference on Environment and Development;[111] endorsed the Rio Declaration on Environment and Development,[112] Agenda 21[113] and the Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests,[114] as adopted by UNCED on 14 June 1992; noted with satisfaction that the United Nations Framework Convention on Climate Change[115] and the Convention on Biological Diversity[116] had been opened for signature and had been signed by a large number of States at UNCED, and stressed the need for those Conventions to come into force as soon as possible; and decided to convene, not later than 1997, a special session for the purpose of an overall review and appraisal of Agenda 21. And by its resolution 47/191, the Assembly, taking note of the report of the Secretary-General,[117] prepared with the assistance of the Secretary-General of UNCED, on institutional arrangements to follow up the Conference, as well as the recommendations and proposals contained therein, endorsed the recommendations on international institutional arrangements to follow up the United Nations Conference on Environment and Development as contained in chapter 38 of Agenda 21, particularly those on the establishment of a high-level Commission on Sustainable Development.

Furthermore, by its resolution 47/192, the General Assembly, recalling Agenda 21, in particular chapter 17, programme area C, relating to the sustainable use and conservation of marine living resources of the high seas, and the Strategy for Fisheries Management and Development, adopted by the World Conference on Fisheries Management and Development,[118] and taking note of the Declaration of Cancun,[119] adopted at the International Conference on Responsible Fishing held at Cancun, Mexico, from 6 to 8 May 1992, decided to convene in 1993, under United Nations auspices and in accordance with the mandate agreed upon at UNCED, an intergovernmental conference on straddling fish stocks and highly migratory fish stocks, which should complete its work before the forty-ninth session of the General Assembly; also decided that the Conference should: (a) identify and assess existing problems related to the conservation and management of such fish stocks; (b) consider means of improving fisheries cooperation among States; (c) formulate appropriate recommendations; and reaffirmed that the work and results of the conference should be fully consistent with the provisions of the United Nations Convention on the Law of Sea[120] and that States should give full effect to the high seas fisheries provisions of the Convention with regard to fisheries populations whose range lay both within and beyond exclusive economic zones (straddling fish stocks) and highly migratory fish stocks. And by its resolution 47/188, the General Assembly welcomed with satisfaction the results and the recommendations of UNCED, particularly chapter 12 of Agenda 21, entitled "Managing fragile ecosystems: combating desertification and drought"; and decided to establish, under its auspices, an Intergovernmental Negotiating Committee for the elaboration of an international convention to combat desertification in those countries experiencing serious drought and/or desertification, particularly in Africa, with a view to finalizing such a convention by June 1994; and also decided that the Committee should be open to all States Members of the United Nations or members of the specialized agencies. Moreover, by its resolution 47/195, the General Assembly welcomed the adoption, on 9 May 1992, of the United Nations Framework Convention on Climate Change by the Intergovernmental Negotiating Committee

for a Framework Convention on Climate Change; called upon States that had not done so to sign or accede to the Convention, as appropriate, and all signatories that had not yet done so to ratify, accept or approve it, so that it might enter into force; decided that the Intergovernmental Negotiating Committee should continue to function in order to prepare for the first session of the Conference of the Parties, as specified in the Convention, and, in that context, to contribute to the effective operation of the interim arrangements set out in article 21 of the Convention; and invited the Committee to convey information on its work to the General Assembly, as well as to the Economic and Social Council and the Commission on Sustainable Development, as appropriate, in particular in the context of chapter 9 of Agenda 21.

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

By its resolution 47/182 of 22 December 1992,[121] adopted on the recommendation of the Second Committee,[122] the General Assembly took note of the report of the Secretary-General of the United Nations Conference on Trade and Development on the consultations carried out in 1992 on an international code of conduct on the transfer of technology;[123] and invited the Secretary-General of UNCTAD, in line with the relevant provisions of the Cartagena Commitment, adopted by UNCTAD at its eighth session,[124] to continue his consultations with Governments on the future course of action on an international code of conduct.

(*c*) Office of the United Nations High Commissioner for Refugees[125]

The international protection of refugees during the period under review was characterized by both encouraging and discouraging trends. Further progress was made in dealing with certain long-standing refugee situations in Africa, Central America and South-East Asia. However, voluntary refugee situations, such as in the Horn of Africa, continued to present major challenges, and new refugee flows continued to occur. In the Middle East, the Persian Gulf crisis presented novel protection challenges, as has most recently the situation in Central and Eastern Europe, where ethnic strife has resulted in the longest mass movement of persons since the Second World War.

The intractability of many refugee problems and the occurrence of new and complex refugee situations served to underline the importance of efforts to devise new approaches and tools for refugee protection. Towards this end, the Working Group on Solutions and Protection established by the Executive Committee of the High Commissioner's Programme submitted its report,[126] which considered seven categories of persons associated with the search for asylum and refuge. These categories were: persons covered by the 1951 Convention relating to the Status of Refugees;[127] persons covered by the Organization of African Unity (OAU) convention governing specific aspects of the problem of refugees in Africa,[128] or the Cartagena Declaration;[129] others forced to leave or prevented from returning because of man-made disasters, persons forced to leave or prevented from returning because of natural or ecological disasters; or extreme poverty; persons who apply for refugee status and are found not to be in one of the four preceding groups; internally displaced persons; and stateless persons. Having considered the Working Group's report at its forty-second session, the Executive Committee requested the High Commissioner to convene such inter-sessional meetings of its Subcommittee of the Whole on International Pro-

tection as would be necessary to continue the constructive discussions on pending issues of the report of the Working Group, as well as on other relevant protection matters, and to seek consensus on appropriate action-oriented follow-up of the report, its recommendations and other relevant matters.

Securing respect for the rights of refugees is of the essence of protection. Contributing to efforts to strengthen observance of fundamental human rights bodies was accordingly an important focus of UNHCR protection activities, contributing as it did to preventing the circumstances which caused refugees to flee, and to facilitating the conditions which would allow them to return. With that in mind, the UNHCR Executive Committee called upon the High Commissioner to continue to contribute to the deliberations of international human rights bodies and to participate actively in preparations for and the proceedings of the 1993 World Conference on Human Rights.

During the reporting period, UNHCR undertook a variety of protection-oriented promotional activities on the occasion of the fortieth anniversaries of the Convention and of the Office, including over 30 refugee law training seminars for government officials and others on status determination procedures. The Centre for Documentation on Refugees further developed its services of refugee documentation, publication, library services and international networking of refugee documentation centres. The Centre continued to publish the quarterly bulletin *Refugee Abstracts* and bibliographies on refugees. Collaboration with the Oxford University Press in the publication of the *International Journal of Refugee Law* continued. The Centre maintained a bibliographic database on refugee-specific literature currently containing over 9,000 items in English, French, German and Spanish. The Centre also maintained three databases containing, respectively, the full texts of national legislations relating to refugee status determination, asylum and nationality; the full texts of international instruments relating to the protection of refugees; and abstracts of judgements of national courts and tribunals relating to refugee status determination or to the rights of refugees.

At the forty-third session of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees, held at Geneva from 5 to 9 October 1992,[130] the Committee reaffirmed the primary nature of the High Commissioner's protection responsibilities, which were performed as a non-political, humanitarian and social function within the framework of international refugee law and applicable regional instruments, with due regard for human rights and humanitarian law, and which necessitated cooperation with UNHCR, as well as among and between States in accordance with the Charter of the United Nations, on a basis of international responsibilities, solidarity and burden-sharing; encouraged States which had not done so to accede to the 1951 Convention[131] and the 1967 Protocol[132] relating to the Status of Refugees in order to promote further international cooperation in responding to and resolving refugee problems; also noted the value of reporting by States parties on implementation of their responsibilities under the 1951 Convention and the 1967 Protocol; again urged States which had not yet done so to respond to the questionnaire on implementation circulated by the High Commissioner; reaffirmed the primary importance of the principles of non-refoulement and asylum as basic to refugee protection; expressed appreciation for the progress report on the implementation of the Guidelines on the Protection of Refugee Women;[133] reaffirmed its conclusion No. 64 (XLI) on refugee women and international pro-

tection; noted with concern the dimension and complexity of the current refugee problem, the potential risk of new refugee situations developing in some countries or regions and the challenges confronting refugee protection as a result of the constantly changing global political, social and economic climate; commended, therefore, the initiative of the High Commissioner in convening the internal Working Group on International Protection, whose recommendations were reflected in the Note on International Protection, which provided a useful basis for practical approaches to meet new and multifaceted protection challenges so that persons of concern to the High Commissioner might receive the protection required by their situation; noted the importance of the promotion of refugee law as an element of emergency preparedness, as well as to facilitate prevention of and solutions to refugee problems, and called upon the High Commissioner to continue to strengthen the Office's promotion and training activities; welcomed initiatives to present the UNHCR Guidelines on Refugee Children in a revised format; and with regard to plans to republish the *UNHCR Handbook on Emergencies*, requested the Office of the United Nations High Commissioner for Refugees to expand existing aspects of protection for women and children not found in the Handbook, to include more complete information found in the Guidelines on the Protection of Refugee Women and the Guidelines on Refugee Children.

Consideration by the General Assembly

By its resolution 47/105 of 16 December 1992,[134] adopted on the recommendation of the Third Committee,[135] the General Assembly noting with satisfaction that 114 States had become parties to the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, 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 it in fulfilling that function, in particular by acceding to and fully and effectively implementing the relevant international and regional refugee instruments; acknowledged with appreciation the progress made in the implementation of the Guidelines on the Protection of Refugee Women; welcomed the proposal of the High Commissioner to appoint an environmental coordinator responsible for developing guidelines and taking other measures for incorporating environmental considerations into the programmes of the Office of the High Commissioner, especially in the least developed countries, in view of the impact on the environment of the large numbers of refugees and displaced persons of concern to the High Commissioner; and recognized the importance of the promotion of refugee law as an element of emergency preparedness, as well as to facilitate prevention of and solutions to refugee problems, and called upon the High Commissioner to continue to strengthen the training and promotion activities of her Office.

(*d*) International drug control

Status of international instruments

In the course of 1992, one more State became a party to the 1961 Single Convention on Narcotic Drugs,[136] four more States became parties to the 1971 Convention on Psychotropic Substances,[137] one more State became a party to the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961,[138]

three 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[139] and 17 more States became parties to the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.[140]

Consideration by the General Assembly

By its resolution 47/98 of 16 December 1992,[141] adopted on the recommendation of the Third Committee,[143] the General Assembly, conscious that the adoption of the Political Declaration and the Global Programme of Action[143] at its seventeenth special session, devoted to the question of international cooperation against illicit production, supply, demand, trafficking and distribution of narcotic drugs and psychotropic substances, was an important step in the harmonization of the efforts of all to combat this 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 and non-use of force or the threat of force in international relations; called upon all States to intensify their actions to promote effective cooperation in the efforts to combat drug abuse and illicit trafficking, so as to contribute to a climate conducive to achieving that end, and to refrain from using the issue for political purposes; and reaffirmed that the international fight against drug trafficking should not in any way justify violation of the principles enshrined in the Charter 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 47/99, the General Assembly, bearing in mind the commitment made in the Political Declaration adopted at its seventeenth special session to keep under constant review the activities set out in the Global Programme of Action, decided to hold four plenary meetings, at a high level at its forty-eighth session, to examine urgently the status of international cooperation against the illicit production and sale of, demand for, traffic in and distribution of narcotic drugs and psychotropic substances.

Furthermore, by its resolution 47/100, the General Assembly recalling that in its resolution 44/141 of 15 December 1989 it had requested the Secretary-General, in his capacity as Chairman of the Administrative Committee on Coordination to coordinate at the inter-agency level the development of a United Nations system-wide action plan on drug abuse control and that the Secretary-General had submitted to the Economic and Social Council at its second regular session of 1990 a report[144] on the United Nations System-Wide Action Plan on Drug Abuse Control as an instrument to facilitate coordination, complementarity and non-duplication in drug control activities within the United Nations system, reaffirmed the commitment expressed in the Global Programme of Action and the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control,[145] and called upon States to take all possible steps to promote and implement, individually and in cooperation with other States, 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 called upon all relevant United Nations agencies, particularly those associated with the United Nations System-Wide Action Plan on Drug Abuse Control, to establish agency-specific implementation plans to incorporate fully into their programmes all the mandates and activities contained in the System-Wide Action Plan, and to submit a report to the Secretary-General on progress made in establishing such agency-specific plan, for inclusion in an annex to the System-Wide Action Plan.

Moreover, by its resolution 47/101, the General Assembly, reaffirming the importance of the role of the United Nations International Drug Control Programme as the main focus for concerted international action for drug abuse control, took note of the report of the Secretary-General on the measures taken to implement resolution 46/104, of 16 December 1991,[146] and welcomed the drug control efforts of the United Nations International Drug Control Programme (UNDCP) to date; and reaffirmed Economic and Social Council resolution 1991/38 of 21 June 1991, in which the Council called upon the Commission on Narcotic Drugs to give policy guidance to UNDCP and to monitor its activities. And by its resolution 47/102, the General Assembly, reaffirming the principle of shared responsibility of the international community in combating drug abuse and illicit trafficking: (i) with regard to international action to combat drug abuse and illicit trafficking, took note of the reports of the Secretary-General;[147] reiterated its condemnation of the crime of drug trafficking in all its forms, and urged continued and effective international action to combat it, in keeping with the principle of shared responsibility; noted with appreciation the activities of the United Nations International Drug Control Programme to promote and monitor the United Nations Decade against Drug Abuse, 1991-2000, under the theme, "A global response to a global challenge"; and welcomed the trend towards ratification and implementation of the Single Convention on Narcotic Drugs of 1961, that Convention as amended by the 1972 Protocol, the Convention on Psychotropic Substances of 1971 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988; and (ii) with regard to implementation of the Global Programme of Action against illicit production, supply, demand, trafficking and distribution of narcotic drugs and psychotropic substances, took note of the report of the Secretary-General[148] concerning the implementation of the Global Programme of Action; and reaffirmed its commitment to implementing the mandates contained in the Global Programme of Action and the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control.

Finally, by its resolution 47/97, the General Assembly, bearing in mind that the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances had entered into force on 11 November 1990 and that, so far, 63 States had ratified or adhered it, took note of the report of the Secretary-General[149] submitted pursuant to resolution 45/146 of 18 December 1990; urged States that had not yet done so to ratify or accede to the Convention as soon as possible, 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, and that Convention as amended by the 1972 Protocol, and the Convention on Psychotropic Substances of 1971.

(e) Human rights questions

(1) *Status and implementation of international instruments*

(i) *International Covenants on Human Rights*

In 1992, 14 more States became parties to the International Covenant on Economic, Social and Cultural Rights,[150] 15 more States became parties to the International Covenant on Civil and Political Rights,[151] 7 more States became parties to the Optional Protocol to the International Covenant on Civil and Political Rights[152] and 2 more States became parties to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, of 1989.[153]

(ii) *International Convention on the Elimination of All Forms of Racial Discrimination*[154]

In 1992, three more States became parties to the International Convention on the Elimination of All Forms of Racial Discrimination.

By its resolution 47/78 of 16 December 1992,[155] adopted on the recommendation of the Third Committee,[156] the General Assembly took note of the report of the Secretary-General on the status of the International Convention on the Elimination of All Forms of Racial Discrimination;[157] expressed its satisfaction at the number of States that had ratified the Convention or acceded thereto; 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 and for action beyond the Decade; requested those States that had not become parties to the Convention to ratify or accede thereto; and requested the States parties to the Convention to consider the possibility of making the declaration provided in article 14 of the Convention. Furthermore, by its resolution 47/79 of the same date,[158] also adopted on the recommendation of the Third Committee,[159] the General Assembly commended the Committee on the Elimination of Racial Discrimination for its work with regard to the implementation of the Convention and the Programme of Action for the Second Decade to Combat Racism and Racial Discrimination;[160] and took note with appreciation of the report of the Committee on the work of its forty-first session.[161] And by its resolution 47/77 of the same date,[162] adopted as well on the recommendation of the Third Committee,[163] the General Assembly requested the Secretary-General to revise and finalize the draft model legislation for the guidance of Governments in the enactment of further legislation against racial discrimination, in the light of comments made by members of the Committee on the Elimination of Racial Discrimination at its fortieth and forty-first sessions and to publish and distribute the text as soon as possible; and renewed its invitation to UNESCO to expedite the preparation of teaching materials and teaching aids to promote teaching, training and education activities on human rights and against racism and racial discrimination, with particular emphasis on activities at the primary and secondary levels of education.

(iii) *International Convention on the Suppression and Punishment of the Crime of Apartheid*[164]

In 1992, four more States became parties to the International Convention on the Suppression and Punishment of the Crime of Apartheid.

By its resolution 47/81 of 16 December 1992,[165] adopted on the recommendation of the Third Committee,[166] the General Assembly took note of the

report of the Secretary-General on the status of the International Convention on the Suppression and Punishment of the Crime of Apartheid;[167] 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 on Human Rights[168] and other human rights instruments; and appealed once again to those States which had not yet done so to ratify or to accede to the Convention without further delay.

(iv) *Convention on the Elimination of All Forms of Discrimination against Women*[169]

In 1992, 10 more States became parties to the Convention on the Elimination of All Forms of Discrimination against Women.

By its resolution 47/94 of 16 December 1992,[170] adopted on the recommendation of the Third Committee,[171] the General Assembly expressed its satisfaction with the increasing number of States that had ratified or acceded to the Convention and supported the recommendations of the Committee on the Elimination of Discrimination against Women to draw attention to those reservations which were incompatible with the objective and purpose of the Convention; urged all States that had not yet ratified or acceded to the Convention to do so as soon as possible; took note of the report of the Secretary-General[172] on the status of the Convention, and requested him to submit annually to the General Assembly a report on the status of the Convention; took note also of the reports of the Committee on the Elimination of Discrimination against Women on its tenth[173] and eleventh[174] sessions; and invited States parties to the Convention to make all possible efforts to submit their initial as well as their second and subsequent periodic reports on the implementation of the Convention, in accordance with article 18 thereof and with the guidelines provided by the Committee, and to cooperate fully with the Committee in the presentation of their reports.

(v) *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*[175]

In 1992, seven more States became parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

By its resolution 47/113 of 16 December 1992,[176] adopted on the recommendation of the Third Committee,[177] the General Assembly welcomed the report of the Committee against Torture;[178] noted the status of submission of reports by States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; reiterated its request to all States to become parties to the Convention as a matter of priority; and invited all States ratifying or acceding to the Convention and those States parties which had not yet done so to make the declaration provided for in articles 21 and 22 of the Convention, and to consider the possibility of withdrawing their reservations to article 20.

(vi) *Convention on the Rights of the Child*[179]

In 1992, 20 more States became parties to the Convention on the Rights of the Child.

By its resolution 47/112 of 16 December 1992,[180] adopted on the recommendation of the Third Committee,[181] the General Assembly took note with appreciation of the report of the Secretary-General on the status of the Conven-

tion on the Rights of the Child;[182] expressed its satisfaction at the number of States that had signed, ratified or acceded to the Convention; called upon all States that had not done so to sign, ratify or accede to the Convention as a matter of priority; appealed to States parties to the Convention that had made reservations to review the compatibility of their reservations with article 51 of the Convention and other relevant rules of international law; welcomed the constructive and useful results achieved by the Committee on the Rights of the Child during its first session, including the adoption of the general guidelines regarding the form and contents of initial reports to be submitted by States parties;[183] and approved the recommendation contained in the resolution adopted by consensus at the meeting of the States parties to the Convention on 11 November 1992.[184]

Furthermore, by its resolution 47/126 of the same date,[185] adopted also on the recommendation of the Third Committee,[186] the General Assembly, recalling the World Declaration on the Survival, Protection and Development of Children and the Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s,[187] adopted at the World Summit for Children on 30 September 1990, the World Declaration on Education for All,[188] adopted by the World Conference on Education for All on 9 March 1990 and chapter 25 of Agenda 21,[189] adopted at the United Nations Conference on Environment and Development on 14 June 1992, expressed grave concern at the growing number of incidents worldwide and at reports of street children being involved in and affected by serious crime, drug abuse, violence and prostitution; emphasized that strict compliance with the provisions of the Convention on the Rights of the Child constituted a significant step towards solving the problem of street children; invited the Committee on the Rights of the Child to consider the possibility of a general comment on street children; and recommended that the Committee on the Rights of the Child and other relevant treaty-monitoring bodies bear that growing problem in mind when examining reports from States parties.

(vii) *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*[190]

By its resolution 47/110 of 16 December 1992,[191] adopted on the recommendation of the Third Committee,[192] the General Assembly took note of the report of the Secretary-General on the Status of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;[193] 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; and requested the Secretary-General to provide all facilities and assistance necessary for the promotion of the Convention, through the World Public Information Campaign on Human Rights and the programme of advisory services in the field of human rights.

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

By its resolution 47/111 of 16 December 1992,[194] adopted on the recommendation of the Third Committee,[195] the General Assembly endorsed the conclusions and recommendations of the meetings of persons chairing the human rights treaty bodies aimed at streamlining, rationalizing and otherwise improv-

ing reporting procedures,[196] and supported the continuing efforts in that connection by the treaty bodies and the Secretary-General within their respective spheres of competence; expressed its satisfaction with the study by the independent expert on possible long-term approaches to enhancing the effective operation of existing and prospective bodies established under United Nations instruments on human rights[197] and, in the light of the conclusions and recommendations contained in the report of the fourth meeting of persons chairing the human rights treaty bodies,[198] requested that the report of the independent expert be updated; requested the Secretary-General to give high priority to establishing a computerized database to improve the efficiency and effectiveness of the functioning of the treaty bodies; and endorsed the amendments to the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

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

By its resolution 47/83 of 16 December 1992,[199] adopted on the recommendation of the Third Committee,[200] the General Assembly, taking note of the report of the Secretary-General on the right of peoples to self-determination,[201] 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; declared its firm opposition to acts of foreign military intervention, aggression and occupation, since those had resulted in the suppression of the right of peoples to self-determination and other human rights in certain parts of the world; and requested the Commission on Human Rights to continue to give special attention to the violation of human rights, especially the right to self-determination, resulting from foreign military intervention, aggression or occupation. Furthermore, by its resolution 47/82 of the same date,[202] adopted also on the recommendation of the Third Committee,[203] the General Assembly called upon all States to implement fully and faithfully all the relevant 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, in all its forms and by all available means.

(3) *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 47/84 of 16 December 1992,[204] adopted on the recommendation of the Third Committee,[205] the General Assembly, welcoming again the adoption of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries,[206] took note with appreciation of the report of the Special Rapporteur of the Commission on Human Rights;[207] condemned the continued recruitment, financing, training, assembly, transit and use of mercenaries, as well as other forms of support to mercenaries, for the purpose of destabilizing and overthrowing the Governments of African States and of other developing States and fighting against the national liberation movements of peoples struggling for the exercise of their right to self-determination; reaffirmed that the use of mercenaries and their recruitment, financing and train-

ing were offences of grave concern to all States and violated the purposes and principles enshrined in the Charter of the United Nations; and called upon all States that had not yet done so to consider taking early action to accede to or to ratify the Convention.

(4) *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*

By its resolution 47/135 of 18 December 1992,[208] adopted on the recommendation of the Third Committee,[209] the General Assembly, having considered the note by the Secretary-General,[210] adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, contained in the annex to the resolution; requested the Secretary-General to ensure the distribution of the Declaration as widely as possible and to include the text of the Declaration in the next edition of *Human Rights: A Compilation of International Instruments*; and invited the relevant organs and bodies of the United Nations, including treaty bodies, as well as representatives of the Commission on Human Rights and the Subcommission on Prevention of Discrimination and Protection of Minorities, to give due regard to the Declaration within their mandates.

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

The General Assembly,

Reaffirming that one of the basic aims of the United Nations, as proclaimed in the Charter, is to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion,

Reaffirming faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,

Desiring to promote the realization of the principles contained in the Charter, the Universal Declaration of Human Rights,[211] the Convention on the Prevention and Punishment of the Crime of Genocide,[212] the International Convention on the Elimination of All Forms of Racial Discrimination,[213] the International Covenant on Civil and Political Rights,[214] the International Covenant on Economic, Social and Cultural Rights,[215] the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Beliefs,[216] and the Convention on the Rights of the Child,[217] as well as other relevant international instruments that have been adopted at the universal or regional level and those concluded between individual States Members of the United Nations,

Inspired by the provisions of article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious or linguistic minorities,

Considering that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live,

Emphasizing that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and States,

Considering that the United Nations has an important role to play regarding the protection of minorities,

Bearing in mind the work done so far within the United Nations system, in particular by the Commission on Human Rights, the Subcommission on Prevention of Discrimination and Protection of Minorities and the bodies established pursuant to the International Covenants on Human Rights and other relevant international human rights instruments in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Taking into account the important work which is done by intergovernmental and non-governmental organizations in protecting minorities and in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Recognizing the need to ensure even more effective implementation of international human rights instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Proclaims this Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities:

Article 1

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.

2. States shall adopt appropriate legislative and other measures to achieve those ends.

Article 2

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.

2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.

3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.

4. Persons belonging to minorities have the right to establish and maintain their own associations.

5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

Article 3

1. Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination.

2. No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration.

Article 4

1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.

2. States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, lan-

guage, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.

3. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.

4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.

5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

Article 5

1. National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

2. Programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

Article 6

States should cooperate on questions relating to persons belonging to minorities, *inter alia*, exchanging information and experiences, in order to promote mutual understanding and confidence.

Article 7

States should cooperate in order to promote respect for the rights set forth in the present Declaration.

Article 8

1. Nothing in the present Declaration shall prevent the fulfilment of international obligations of States in relation to persons belonging to minorities. In particular, States shall fulfil in good faith the obligations and commitments they have assumed under international treaties and agreements to which they are parties.

2. The exercise of the rights set forth in the present Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms.

3. Measures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not *prima facie* be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights.

4. Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States.

Article 9

The specialized agencies and other organizations of the United Nations systems shall contribute to the full realization of the rights and principles set forth in the present Declaration, within their respective fields of competence.

(5) *Right to development*

By its resolution 47/123 of 18 December 1992,[218] adopted on the recommendation of the Third Committee,[219] the General Assembly, reaffirming the Declaration on the Right to Development,[220] bearing in mind the principles proclaimed in the Rio Declaration on Environment and Development of 14 June 1992,[221] and having considered the comprehensive report of the Secretary-General[222] prepared pursuant to Commission on Human Rights resolution

1991/15 of 22 February 1991[223] and General Assembly resolution 46/123 of 17 December 1991, reaffirmed the importance of the right to development for all countries, in particular the developing countries; took note with interest of the comprehensive report of the Secretary-General; requested the Secretary-General to submit to the Commission on Human Rights at its forty-ninth session concrete proposals on the effective implementation and promotion of the Declaration on the Right to Development, taking into account the views expressed on the issue at the forty-eighth session of the Commission as well as any further comments and suggestions that might be submitted on the basis of paragraph 3 of Commission resolution 1992/13 of 21 February 1992;[224] and reiterated the need for appropriate ways and means, such as an evaluation mechanism, to ensure the promotion, encouragement and reinforcement of the principles contained in the Declaration.

(6) *Human rights and extreme poverty*

By its resolution 47/134 of 18 December 1992,[225] adopted on the recommendation of the Third Committee,[226] the General Assembly reaffirmed that extreme poverty and exclusion from society constituted a violation of human dignity and that urgent national and international action was therefore required to eliminate them; and expressed its satisfaction that the Commission on Human Rights, in its resolution 1992/11 of 21 February 1992,[227] had requested the Subcommission on Prevention of Discrimination and Protection of Minorities to undertake a study of extreme poverty and, in particular, of the following aspects: the effects of extreme poverty on the enjoyment and exercise of all human rights and fundamental freedoms of those experiencing it; the efforts of the poorest to achieve the exercise of those rights and to participate fully in the development of the society in which they lived; the conditions in which the poorest might effectively convey their experience and their thoughts and become partners in the realization of human rights; and the means of ensuring a better understanding of the experience and thoughts of the poorest and of the persons working with them.

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

By its resolution 47/129 of 18 December 1992,[228] adopted on the recommendation of the Third Committee,[229] the General Assembly reaffirmed that freedom of thought, conscience, religion and belief was a human right derived from the inherent dignity of the human person and guaranteed to all without discrimination; urged States to ensure that their constitutional and legal systems provided adequate 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 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief,[230] the right of all persons to worship or assembly in connection with a religion or belief, and to establish and maintain places for those purposes; also called upon all States in accordance with their national legislation to exert utmost efforts to ensure that religious places and shrines were fully respected and protected; recommended that the promotion and protection of the right to freedom of thought, conscience and religion be given appropriate priority in the work of the United Nations programme of advisory services in the field of human rights, with regard to, *inter alia*, the drafting of basic legal texts in conformity with international instru-

ments on human rights and taking into account the provisions of the Declaration; encouraged the Human Rights Committee to give priority to its announced intention to prepare a general comment on article 18 of the International Covenant on Civil and Political Rights,[231] dealing with freedom of thought, conscience and religion; and requested the Commission on Human Rights to continue its consideration of measures to implement the Declaration.

(8) *Declaration on the Protection of All Persons from Enforced Disappearance*

By its resolution 47/133 of 18 December 1992,[232] adopted on the recommendation of the Third Committee,[233] the General Assembly proclaimed the following Declaration on the Protection of All Persons from Enforced Disappearance as a body of principles for all States and urged that all efforts be made so that the Declaration might become generally known and respected:

Article 1

1. Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.

2. Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, *inter alia*, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.

Article 2

1. No state shall practise, permit or tolerate enforced disappearances.

2. States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance.

Article 3

Each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.

Article 4

1. All acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness.

2. Mitigating circumstances may be established in national legislation for persons who, having participated in enforced disappearances, are instrumental in bringing the victims forward alive or in providing voluntarily information which would contribute to clarifying cases of enforced disappearance.

Article 5

In addition to such criminal penalties as are applicable, enforced disappearances render their perpetrators and the State or State authorities which organize, acquiesce in or tolerate such disappearances liable under civil law, without prejudice to the international responsibility of the State concerned in accordance with the principles of international law.

Article 6

1. No order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance. Any person receiving such an order or instruction shall have the right and duty not to obey it.

2. Each State shall ensure that orders or instructions directing, authorizing or encouraging any enforced disappearance are prohibited.

3. Training of law enforcement officials shall emphasize the provisions in paragraphs 1 and 2 of the present article.

Article 7

No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.

Article 8

1. No State shall expel, return (*refouler*) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 9

1. The right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances, including those referred to is article 7 above.

2. In such proceedings, competent national authorities shall have access to all places where persons deprived of their liberty are being held and to each part of those places, as well as to any place in which there are grounds to believe that such persons may be found.

3. Any other competent authority entitled under the law of the State or by any international legal instrument to which the State is a party may also have access to such places.

Article 10

1. Any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention.

2. Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned.

3. An official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally, each State shall take steps to maintain similar centralized registers. The information contained in these registers shall be made available to the persons mentioned in the preceding paragraph, to any judicial or other competent and independent national authority and to any other competent authority entitled under the law of the State concerned or any international legal instrument to which a State concerned is a party, seeking to trace the whereabouts of a detained person.

Article 11

All persons deprived of liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability fully to exercise their rights are assured.

Article 12

1. Each State shall establish rules under its national law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such

orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention.

2. Each State shall likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment, and of other officials authorized by law to use force and firearms.

Article 13

1. Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.

2. Each State shall ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits.

3. Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.

4. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation.

5. Steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.

6. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified.

Article 14

Any person alleged to have perpetrated an act of enforced disappearance in a particular State shall, when the facts disclosed by an official investigation so warrant, be brought before the competent civil authorities of that State for the purpose of prosecution and trial unless he has been extradited to another State wishing to exercise jurisdiction in accordance with the relevant international agreements in force. All States should take any lawful and appropriate action available to them to bring to justice all persons presumed responsible for an act of enforced disappearance, who are found to be within their jurisdiction or under their control.

Article 15

The fact that there are grounds to believe that a person has participated in acts of an extremely serious nature such as those referred to in article 4, paragraph 1, above, regardless of the motives, shall be taken into account when the competent authorities of the State decide whether or not to grant asylum.

Article 16

1. Persons alleged to have committed any of the acts referred to in article 4, paragraph 1, above, shall be suspended from any official duties during the investigation referred to in article 13 above.

2. They shall be tried only by the competent ordinary courts in each State, and not by any other special tribunal, in particular military courts.

3. No privileges, immunities or special exemptions shall be admitted in such trials, without prejudice to the provisions contained in the Vienna Convention on Diplomatic Relations.

4. The persons presumed responsible for such acts shall be guaranteed fair treatment in accordance with the relevant provisions of the Universal Declaration of Human Rights and other relevant international agreements in force at all stages of the investigation and eventual prosecution and trial.

Article 17

1. Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.

2. When the remedies provided for in article 2 of the International Covenant on Civil and Political Rights are no longer effective, the statute of limitations relating to acts of enforced disappearance shall be suspended until these remedies are re-established.

3. Statutes of limitations, where they exist, relating to acts of enforced disappearance shall be substantial and commensurate with the extreme seriousness of the offence.

Article 18

1. Persons who have or are alleged to have committed offences referred to in article 4, paragraph 1, above, shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction.

2. In the exercise of the right of pardon, the extreme seriousness of acts of enforced disappearance shall be taken into account.

Article 19

The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependants shall also be entitled to compensation.

Article 20

1. States shall prevent and suppress the abduction of children of parents subjected to enforced disappearance and of children born during their mother's enforced disappearance, and shall devote their efforts to the search for and identification of such children and to the restitution of the children to their families of origin.

2. Considering the need to protect the best interests of children referred to in the preceding paragraph, there shall be an opportunity, in States which recognize a system of adoption, for a review of the adoption of such children and, in particular, for annulment of any adoption which originated in enforced disappearance. Such adoption should, however, continue to be in force if consent is given, at the time of the review, by the child's closest relatives.

3. The abduction of children of parents subjected to enforced disappearance or of children born during their mother's enforced disappearance, and the act of altering or suppressing documents attesting to their true identity, shall constitute an extremely serious offence, which shall be punished as such.

4. For these purposes, States shall, where appropriate, conclude bilateral and multilateral agreements.

Article 21

The provisions of the present Declaration are without prejudice to the provisions enunciated in the Universal Declaration of Human Rights or in any other international instrument, and shall not be construed as restricting or derogating from any of those provisions.

Furthermore, by its resolution 47/132 of 18 December 1992,[234] adopted also on the recommendation of the Third Committee,[235] the General Assembly expressed its appreciation to the Working Group on Enforced or Involuntary Disappearances for its humanitarian work and thanked those Governments that were cooperating with it; welcomed the decision made by the Commission on Human Rights in its resolution 1992/30 of 28 February 1992[236] to extend for three years the term of the mandate of the Working Group, as defined in Commission resolution 20 (XXXVI) of 29 February 1980;[237] invited Governments to take appropriate legislative or other steps to prevent and suppress the practice of enforced disappearances and to take action at national and regional levels and in cooperation with the United Nations to that end; and requested the Working Group, pursuant to its mandate, to take into account the provisions of the Declaration on the Protection of All Persons from Enforced Disappearance.

(9) *Summary and arbitrary executions*

By its resolution 47/136 of 18 December 1992,[238] adopted on the recommendation of the Third Committee,[239] the General Assembly once again strongly condemned the large number of extrajudicial, summary or arbitrary executions which continued to take place throughout the world; demanded that the practice of summary or arbitrary executions be brought to an end; appealed urgently to Governments, United Nations bodies, the specialized agencies, regional intergovernmental organizations and non-governmental organizations to take effective action to combat and eliminate summary or arbitrary executions, including extra-legal executions; reaffirmed Economic and Social Council decision 1992/242 of 20 July 1992, in which the Council approved the decision of the Commission on Human Rights[240] to appoint a special rapporteur for three years to consider questions related to summary or arbitrary executions and also approved the Commission's request to the Secretary-General to continue to provide all necessary assistance to the Special Rapporteur; and welcomed the recommendations made by the Special Rapporteur in his reports to the Commission on Human Rights at its forty-fourth, forty-fifth, forty-sixth, forty-seventh and forty-eighth sessions,[241] with a view to eliminating summary or arbitrary executions.

(10) *Ethnic cleansing and racial hatred*

By its resolution 47/80 of 16 December 1992,[242] adopted on the recommendation of the Third Committee,[243] the General Assembly, recalling the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, deeply alarmed by policies and practices of ethnic cleansing, which fostered hatred and violence, wherever they occurred, and reaffirming its resolution 46/242 of 25 August 1992, condemned unreservedly ethnic cleansing and acts of violence arising from racial hatred; strongly rejected policies and ideologies aimed at promoting racial hatred and ethnic cleansing in any form; reaffirmed that ethnic cleansing and racial hatred were totally incompatible with universally recognized human rights and fundamental freedoms; reiterated its conviction that those who committed or ordered the commission of acts of ethnic cleansing were individually responsible and should be brought to justice; demanded that all those who committed or ordered the commission of acts of ethnic cleansing put an end to them im-

mediately; and called upon all States to cooperate in eliminating all forms of ethnic cleansing and racial hatred.

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

By its resolution 47/125 of 18 December 1992,[244] adopted on the recommendation of the Third Committee,[245] the General Assembly, reaffirming that regional arrangements for the promotion and protection of human rights might make a major contribution to the effective enjoyment of human rights and fundamental freedoms and that the exchange of information and experience in that field among the regions, within the United Nations system, might be improved, and bearing in mind that regional instruments should complement the universally accepted human rights standards and that the persons chairing the human rights treaty bodies had noted during their third meeting, held at Geneva from 1 to 5 October 1990, that certain inconsistencies between provisions of international instruments and those of regional instruments might raise difficulties with regard to their implementation,[246] took note of the report of the Secretary-General;[247] welcomed the continuing cooperation and assistance of the Centre for Human Rights of the Secretariat in the further strengthening of the existing regional arrangements and regional machinery for the promotion and protection of human rights; welcomed also in that respect the close cooperation given by the Centre for Human Rights in the organization of regional and subregional training courses or workshops in the field of human rights aiming at creating greater understanding of the promotion and protection of human rights issues in the regions and at improving procedures and examining the various systems for the promotion and protection of the universally accepted human rights standards; invited States in areas where regional arrangements in the field of human rights did not yet exist to consider agreements with a view to the establishment within their respective regions of suitable regional machinery for the promotion and protection of human rights; and invited the organizers of regional meetings convened in preparation for the World Conference on Human Rights, to be held in 1993, to promote further ratification of and accession to United Nations human rights treaties and the implementation of universally accepted human rights standards.

(12) *Strengthening of United Nations action in the field of human rights through the promotion of international cooperation and the importance of non-selectivity, impartiality and objectivity*

By its resolution 47/131 of 18 December 1992,[248] adopted on the recommendation of the Third Committee,[249] the General Assembly reiterated that, by virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples had the right 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 within the provisions of the Charter, including respect for territorial integrity; reaffirmed that it was a purpose of the United Nations and the task of all Member States, in cooperation with the Organization, to promote and encourage respect for human rights and fundamental freedoms and to remain vigilant with regard to violations of human rights wherever they occurred; called upon all Member States to base their activities for the protection and promotion of human rights on the Charter of the United Nations, the Universal Declara-

tion of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and other relevant international instruments, and to refrain from activities that were inconsistent with that international framework; considered that international co-operation in that field should make an effective and practical contribution to the urgent task of preventing mass and flagrant violations of human rights and fundamental freedoms for all and to the strengthening of international peace and security; affirmed that the promotion, protection and full realization of all human rights and fundamental freedoms as legitimate concerns of the world community should be guided by the principles of non-selectivity, impartiality and objectivity, and should not be used for political ends; invited Member States to consider adopting, as appropriate, within the framework of their respective legal systems and in accordance with their obligations under international law, especially the Charter, and international human rights instruments, the measures that they might deem appropriate to achieve further progress in international cooperation in promoting and encouraging respect for human rights and fundamental freedoms; and requested the Commission on Human Rights to continue to examine ways and means to strengthen United Nations action in that regard on the basis of the resolution and of Commission resolution 1992/39 of 28 February 1992.[250]

(13) *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 47/137 of 18 December 1992,[251] adopted on the recommendation of the Third Committee,[252] the General Assembly reiterated its request that the Commission on Human Rights should continue its current work on overall analysis with a view to further promoting and strengthening human rights and fundamental freedoms; reaffirmed that equal attention and urgent consideration should be given to the implementation, promotion and protection of civil and political rights and of economic, social and cultural rights; 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 of 16 December 1977, paying due attention also to other situations of violations of human rights; reaffirmed that the right to development was an inalienable human right; reaffirmed also 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; and considered it necessary for all Members States to promote international cooperation on the basis of respect for the independence, sovereignty and territorial integrity of each State, including the right of every people to choose freely its own socio-economic and political system, with a view to solving international economic, social and humanitarian problems.

(14) *Enhancing the effectiveness of the principle of periodic and genuine elections*

By its resolution 47/138 of 18 December 1992,[253] adopted on the recommendation of the Third Committee,[254] the General Assembly, acknowledging the proposed guidelines on electoral assistance prepared by the Secretariat,[255]

took note with appreciation of the report of the Secretary-General;[256] welcomed the decision of the Secretary-General[257] to designate a focal point for electoral verification and electoral assistance; and took note of the decision of the Secretary-General[258] to establish the Electoral Assistance Unit within the Secretariat.

(15) *New international humanitarian order*

By its resolution 47/106 of 16 December 1992,[259] adopted on the recommendation of the Third Committee,[260] the General Assembly, taking note of the reports of the Secretary-General[261] and the comments made by various Governments, specialized agencies and non-governmental organizations, and recognizing the need for active follow-up to the recommendations and suggestions made by the Independent Commission on International Humanitarian Issues[262] and the role being played in that regard by the Independent Bureau for Humanitarian Issues, set up for the purpose, expressed its appreciation to the Secretary-General for his continuing active support to the efforts to promote a new international humanitarian order; urged Governments as well as governmental and non-governmental organizations that had not yet done so to provide their comments and expertise to the Secretary-General regarding the humanitarian order and the report of the Independent Commission; called upon Governments, the United Nations system and intergovernmental and non-intergovernmental organizations further to develop international cooperation in the humanitarian field; and invited the Independent Bureau for Humanitarian Issues to continue and further strengthen its essential role in following up the work of the Independent Commission.

(16) *World Conference on Human Rights*

By its resolution 47/122 of 18 December 1992,[263] adopted on the recommendation of the Third Committee,[264] the General Assembly took note with appreciation of the reports of the Preparatory Committee for the World Conference on Human Rights on the work of its second[265] and third[266] sessions; approved the draft rules of procedure for the World Conference on Human Rights, as recommended by the Preparatory Committee, with exception of rule 15 (*e*); also approved the provisional agenda for the Conference, as annexed to the resolution, on the understanding that participants could raise issues of interest to them under the appropriate agenda item at the fourth session of the Preparatory Committee and at the Conference for possible inclusion in the final text.

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

By its resolution 47/128 of 18 December 1992,[267] adopted on the recommendation of the Third Committee,[268] the General Assembly took note of the report of the Secretary-General;[269] 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 major conventions on human rights, as well as information and education on the practical ways in which the rights and freedoms enjoyed under those instruments could be exercised; and urged all Member States to include in their educational curricula materials relevant to a comprehensive understand-

ing 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.

(f) Crime prevention and criminal justice

(1) *United Nations crime prevention and criminal justice programme*

By its resolution 47/91 of 16 December 1992,[270] adopted on the recommendation of the Third Committee,[271] the General Assembly, recalling the recommendations of the Ministerial Meeting on the Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme, held at Versailles, France, from 21 to 23 November 1991,[272] which had been adopted by the General Assembly by it resolution 46/152 of 18 December 1991 on the creation of an effective United Nations crime prevention and criminal justice programme, and which had included the statement of principles and programme of action contained in the annex to the resolution, and taking note of Economic and Social Council resolution 1992/1 of February 1992, by which the Council had decided to establish the Commission on Crime Prevention and Criminal Justice, welcomed the establishment of the Commission on Crime Prevention and Criminal Justice and the results of its first session, held at Vienna from 21 to 30 April 1992;[273] and took note of the reports of the Secretary-General on the measures taken to implement the statement of principles and programme of action of the United Nations crime prevention and criminal justice programme,[274] on the United Nations African Institute for the Prevention of Crime and the Treatment of Offenders[275] and on the strengthening of international cooperation in combating organized crime.[276]

(2) *International cooperation in combating organized crime*

By its resolution 47/87 of 16 December 1992,[277] adopted on the recommendation of the Third Committee,[278] the General Assembly, recalling that the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders had adopted resolutions entitled "Organized crime" and "Prevention and control of organized crime",[279] bearing in mind that the Eighth Congress had explored possibilities and ways of strengthening further international cooperation in combating organized crime and had adopted the Guidelines for the prevention and control of organized crime,[280] and model treaties relating to that question,[281] acknowledging with appreciation the work done by the Commission on Crime Prevention and Criminal Justice during its first session, held at Vienna from 21 to 30 April 1992,[282] urged Member States to give favourable consideration to the implementation of the Guidelines for the prevention and control of organized crime at both national and international levels; invited Member States to make available to the Secretary-General, on request, the provisions of their legislation relating to money laundering, the tracing, seizing and forfeiture of the proceeds of crime and the monitoring of large-scale cash transactions and other measures so that they might be available to Member States desiring to enact or further develop legislation in those fields; requested the Commission on Crime Prevention and Criminal Justice to continue to consider ways of strengthening international cooperation in combating organized crime; and also requested the Commission to organize the ongoing review and analysis of the incidence of transnational organized criminal activity and the dissemination of information thereon.

(3) *Convention on the Prevention and Punishment of the Crime of Genocide*[283]

By its resolution 47/108 of 16 December 1992,[284] adopted on the recommendation of the Third Committee,[285] the General Assembly, taking note of the report of the Secretary-General,[286] once again strongly condemned the crime of genocide; noted with satisfaction that more than 100 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 done so to become parties to the Convention and to ratify it and accede to it without further delay.

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4. LAW OF THE SEA

Status of the United Nations Convention on the Law of the Sea[287]

As of 31 December 1992, 53 States had ratified the United Nations Convention on the Law of the Sea or acceded to it.

Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea[288]

The Preparatory Commission met twice during 1992. The tenth session was held at Kingston from 24 February to 13 March 1992 and a summer meeting was held in New York from 10 to 21 August 1992.

Regarding the implementation of resolution II of the Third United Nations Conference on the Law of the Sea, the General Committee, acting on behalf of the Preparatory Commission as the executive organ for the implementation of resolution II, adopted on 12 March 1992 the Understanding on the fulfilment of obligations by the registered pioneer investor, the China Ocean Mineral Resources and Development Association, and its certifying State, China.[289] On 18 August 1992, the General Committee adopted the similar Understanding with regard to the Interoceanmetal Joint Organization and its certifying States, Bulgaria, Cuba, Czechoslovakia, Poland and the Russian Federation.[290]

During the tenth session, the General Committee also: (a) considered the report of the Group of Experts on a detailed examination of the documents submitted jointly by the registered pioneer investors on the preparatory work concerning the exploration of the area reserved for the International Seabed Authority[291] and approved its recommendations; (b) considered and took note of the periodic reports submitted by the certifying States — France, India, Japan and the Russian Federation — on the pioneer activities carried out by the registered pioneer investors; (c) took note of the report of the third meeting of the Training Panel, approved the recommendations and designations of the six candidates selected by the Panel for the traineeships under the training programmes offered by France and Japan; and (d) took note of the communication on the training programmes offered by India and the Russian Federation.[292]

With regard to the preparation of the draft rules of procedure for the organs of the Authority, the Plenary completed its consideration of the draft Headquarters Agreement between the International Seabed Authority and the Government of Jamaica;[293] the draft Protocol on the privileges and immunities of officials and experts;[294] and the draft Agreement concerning the relationship between the United Nations and the International Seabed Authority.[295] The Ple-

nary also completed its consideration of the functions of the Finance Committee and continued exchanging views on the issues of decision-making in that Committee.

The four special commissions of the Preparatory Commission had been considering the substantive work allocated to them.

Special Commission 1

The Ad Hoc Working Group completed its work on the three "hard-core" issues entrusted to it, namely, criteria for identification of developing land-based producer States likely to be or actually affected by seabed production in the near future; the issue of assistance to developing land-based producer States, including system of compensation fund; and the issue of effects of subsidized seabed mining.[296] The Chairman's Negotiating Group had reviewed the 17 provisional conclusions and their annexes, which could form the basis of the recommendations to the Authority. With the consideration of the background paper on the projection of demand, supply and price of metals contained in polymetallic nodules,[297] Special Commission 1 had completed its consideration of all items contained in its work programme.[298]

Special Commission 2

The Special Commission focused on working papers and documents relating to: (a) provisions of the Convention relating to the structure and organization of the Enterprise, the operational arm of the Authority; (b) suggestions of the Chairman to facilitate discussion on transitional arrangements for the Enterprise; (c) joint venture as the operational option for the Enterprise in its initial operation; and (d) the Preparatory Commission Training Programme. The Special Committee agreed on the contents of its draft final report,[299] which would be considered at its eleventh session. This draft final report would include a review of the draft final report of the Chairman's Advisory Group on Assumptions.[300]

Special Commission 3

With the completion of the consideration of the documents on accounting principles and procedures[301] and labour, health and safety standards[302] the Special Commission considered that it had concluded the final examination of all parts of the deep seabed mining code, which formed its mandate.[303]

Special Commission 4

The Special Commission completed its review of the revised draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany[304] with the redraft of article 32.[305] It also adopted the draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea.[306]

Consideration by the General Assembly

By its resolution 47/65 of 11 December 1992,[307] the General Assembly expressed its satisfaction at the increasing and overwhelming support for the United Nations Convention on the Law of the Sea, as evidenced, *inter alia*, by the 159 signatures and 53 of the 60 ratifications or accessions required for entry into force of the Convention; invited all States to make renewed efforts to facilitate universal participation in the Convention; noted with appreciation the initiative

of the Secretary-General to promote dialogue aimed at addressing issues of concern to some States in order to achieve universal participation in the Convention;[308] recognized that political and economic changes, including particularly a growing reliance on market principles, underscored the need to re-evaluate, in the light of the issues of concern to some States,[309] matters in the regime to be applied to the Area and its resources, and that a productive dialogue on such issues involving all interested parties would facilitate the prospect of universal participation in the Convention, for the benefit of mankind as a whole; 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; recalled the Understanding on the Fulfilment of Obligations by the Registered Pioneer Investors and their Certifying States adopted by the Preparatory Commission on 30 August 1990[310] as well as the understandings adopted on 12 March 1992,[311] and 18 August 1992;[312] expressed its appreciation to the Secretary-General for his efforts in support of the Convention and for the effective execution of programme 10 (Law of the sea and ocean affairs) in the medium-term plan for the period 1992-1997,[313] as well as for the report prepared pursuant to paragraph 23 of General Assembly resolution 46/78 of 12 December 1991,[314] and requested him to carry out the activities outlined therein, as well as those aimed at the strengthening of the legal regime of the sea; and welcomed regional efforts being undertaken by developing countries to integrate the ocean sector in national development plans and programmes through the process of international cooperation and assistance, in particular the initiatives mentioned in the report of the Secretary-General.[315]

5. INTERNATIONAL COURT OF JUSTICE[316, 317]

Cases before the Court

A. CONTENTIOUS CASES BEFORE THE FULL COURT

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

By a letter dated 11 May 1992, the Agent of Nicaragua informed the Court that, because the Parties had reached an out-of-court agreement aimed at enhancing their good-neighbourly relations, the Government of Nicaragua had decided to renounce all further right of action based on the case, and did not wish to go on with the proceedings.

As required by Article 89 of the Rules of Court, the President of the Court fixed 25 May 1992 as the time-limit within which Honduras might state whether it opposed the discontinuance. By a letter dated 14 May 1992, transmitted to the Registry of the Court by facsimile on 18 May 1992 (the original of which was subsequently transmitted on 27 May 1992), the Co-Agent of Honduras informed the Court that his Government did not oppose discontinuance of the proceedings.

Consequently, on 27 May 1992, the Court made an Order recording the discontinuance of the proceedings and directing the removal of the case from the Court's list.[318]

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

By Orders of 18 December 1991[319] and 5 June 1992,[320] made in response to successive requests 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 the above-mentioned time-limit for the written observations and submissions of the Islamic Republic on the preliminary objections to 9 June and 9 September 1992 respectively. Those observations and submissions were filed within the prescribed time-limit and were communicated to the Secretary-General of the International Civil Aviation Organization, together with the written pleadings previously filed, pursuant to Article 34, paragraph 3, of the Statute of the Court and Article 69, paragraph 3, of the Rules of Court. The President of the Court, acting under the same provisions, fixed 9 December 1992 as the time-limit for the eventual submissions of written observations by the Council of ICAO. ICAO's observations were duly filed within that time-limit.

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

On 26 June 1992, at a public sitting, the Court delivered its judgment on the Preliminary Objections,[321] a summary of which is given below, followed by the text of the operative paragraph.[322]

I. *History of the case* (paras. 1-6)

In its judgment, the Court recalled that on 19 May 1989 Nauru had filed in the Registry of the Court an Application instituting proceedings against Australia in respect of a "dispute ... over the rehabilitation of certain phosphate lands [in Nauru] worked out before Nauruan independence". It noted that to found the jurisdiction of the Court the Application relied on the declarations made by the two States accepting the jurisdiction of the Court, as provided for in Article 36, paragraph 2, of the Statute of the Court.

After reciting the history of the case, the Court set out the following submissions presented by Nauru in the Memorial:

> "On the basis of the evidence and legal argument presented in this Memorial, the Republic of Nauru
>
> *Requests the Court to adjudge and declare*
>
> that the Respondent State bears responsibility for breaches of the following legal obligations:
>
> *First*: the obligations set forth in Article 76 of the Charter of the United Nations and Articles 3 and 5 of the Trusteeship Agreement for Nauru of 1 November 1947.
>
> *Second*: the international standards generally recognized as applicable in the implementation of the principle of self-determination.
>
> *Third*: the obligation to respect the right of the Nauruan people to permanent sovereignty over their natural wealth and resources.
>
> *Fourth*: the obligation of general international law not to exercise powers of administration in such a way as to produce a denial of justice *lato sensu*.

Fifth: the obligation of general international law not to exercise powers of administration in such a way as to constitute an abuse of rights.

Sixth: the principle of general international law that a State which is responsible for the administration of territory is under an obligation not to bring about changes in the condition of the territory which will cause irreparable damage to, or substantially prejudice, the existing or contingent legal interest of another State in respect of that territory.

Requests the Court to adjudge and declare further

that the Republic of Nauru has a legal entitlement to the Australian allocation of the overseas assets of the British Phosphate Commissioners which were marshalled and disposed of in accordance with the trilateral Agreement concluded on 9 February 1987.

Requests the Court to adjudge and declare

that the Respondent State is under a duty to make appropriate reparation in respect of the loss caused to the Republic of Nauru as a result of the breaches of its legal obligations detailed above and its failure to recognize the interest of Nauru in the overseas assets of the British Phosphate Commissioners."

The Court further set out the submissions presented by Australia in its Preliminary Objections and by Nauru in the Written Statement of its Observations and Submissions on the Preliminary Objections, as well as the final submissions presented by each of the Parties in the course of the oral proceedings, of which the latter are as follows:

On behalf of Australia:

"On the basis of the facts and law set out in its Preliminary Objections and its oral pleadings, and for all or any of the grounds and reasons set out therein, the Government of Australia requests the Court to adjudge and declare that the claims by Nauru against Australia set out in their Application and Memorial are inadmissible and that the Court lacks jurisdiction to hear the claims."

On behalf of Nauru,

"In consideration of its written and oral pleadings the Government of the Republic of Nauru requests the Court:

To reject the preliminary objections raised by Australia, and

To adjudge and declare:

(*a*) that the Court has jurisdiction in respect of the claims presented in the Memorial of Nauru, and

(*b*) that the claims are admissible.

In the alternative, the Government of the Republic of Nauru requests the Court to declare that some or all of the Australian preliminary objections do not possess, in the circumstances of the case, an exclusively preliminary character, and in consequence, to join some or all of these objections to the merits."

II. *Objections concerning the circumstances in which the dispute arose* (paras. 8-38)

1. The Court began by considering the question of its jurisdiction. Nauru based the Court's jurisdiction on the declarations whereby Australia and Nauru

had accepted the jurisdiction of the Court under Article 36, paragraph 2, of the Statute. The declaration of Australia specified that it "does not apply to any dispute in regard to which the parties thereto have agreed or shall agree to have recourse to some other method of peaceful settlement".

Australia contended that as a result of the latter reservation the Court lacked jurisdiction to deal with Nauru's Application. It recalled that Nauru had been placed under the Trusteeship System provided for in Chapter XII of the Charter of the United Nations by a Trusteeship Agreement approved by the General Assembly on 1 November 1947 and argued that any dispute which arose in the course of the Trusteeship between "the Administering Authority and the indigenous inhabitants" should be regarded as having been settled by the very fact of the termination of the Trusteeship, provided that that termination was unconditional.

The effect of the Agreement relating to the Nauru Island Phosphate Industry, concluded on 14 November 1967 between the Nauru Local Government Council, on the one hand, and Australia, New Zealand and the United Kingdom of Great Britain and Northern Ireland, on the other, was, in Australia's submission, that Nauru had waived its claims to rehabilitation of the phosphate lands. Australia maintained, moreover, that on 19 December 1967, the United Nations General Assembly had terminated the Trusteeship without making any reservation relating to the administration of the Territory. In those circumstances, Australia contended that, with respect to the dispute presented in Nauru's Application, Australia and Nauru had agreed "to have recourse to some other method of peaceful settlement" within the meaning of the reservation in Australia's declaration, and that consequently the Court lacked jurisdiction to deal with that dispute.

The Court considered that declarations made pursuant to Article 36, paragraph 2, of the Statute of the Court could only relate to disputes between States. The declaration of Australia only covered that type of dispute; it was made expressly "in relation to any other State accepting the same obligation . . .". In those circumstances, the question that arose in this case was whether Australia and the Republic of Nauru had or had not, after 31 January 1968, when Nauru acceded to independence, concluded an agreement whereby the two States undertook to settle their dispute relating to rehabilitation of the phosphate lands by resorting to an agreed procedure other than recourse to the Court. No such agreement had been pleaded or shown to exist. That question had therefore to be answered in the negative. The Court thus rejected the objection raised by Australia on the basis of the above-mentioned reservation.

2. Australia's second objection was that the Nauruan authorities, even before acceding to independence, had waived all claims relating to rehabilitation of the phosphate lands. This objection contained two branches. In the first place, the waiver, it was said, had been the implicit but necessary result of the above-mentioned Agreement of 14 November 1967. It was also said to have resulted from the statements made in the United Nations in the autumn of 1967 by the Nauruan Head Chief on the occasion of the termination of the Trusteeship. In the view of Australia, Nauru was precluded from going back on that two-fold waiver and its claim should accordingly be rejected as inadmissible.

Having taken into consideration the negotiations which led to the Agreement of 14 November 1967, the Agreement itself, and the discussions at the United Nations, the Court concluded that the Nauruan local authorities had not,

before independence, waived their claim relating to rehabilitation of the phosphate lands worked out prior to 1 July 1967. The Court therefore rejected the second objection raised by Australia.

3. Australia's third objection was that Nauru's claim was

> "inadmissible on the ground that termination of the Trusteeship by the United Nations precludes allegations of breaches of the Trusteeship Agreement from now being examined by the Court".

The Court noted that, by its resolution 2347 (XXII) of 19 December 1967, the General Assembly of the United Nations had resolved

> "in agreement with the Administering Authority, that the Trusteeship Agreement for the Territory of Nauru ... shall cease to be in force upon the accession of Nauru to independence on 31 January 1968".

The Court observed that such a resolution had "definitive legal effect,[323] consequently, the Trusteeship Agreement had been "terminated" on that date and "is no longer in force".[324] It then examined the particular circumstances in which the Trusteeship for Nauru had been terminated. It concluded that the facts showed that when, on the recommendation of the Trusteeship Council, the General Assembly had terminated the Trusteeship over Nauru in agreement with the Administering Authority, everyone had been aware of subsisting differences of opinion between the Nauru Local Government Council and the Administering Authority with regard to rehabilitation of the phosphate lands worked out before 1 July 1967. Accordingly, though General Assembly resolution 2347 (XXII) had not expressly reserved any rights which Nauru might have had in that regard, the Court could not view that resolution as giving a discharge to the Administering Authority with respect to such rights. In the opinion of the Court, the rights Nauru might have had in connection with rehabilitation of the lands remained unaffected. The Court therefore, having regard to the particular circumstances of the case, rejected Australia's third objection.

4. Australia's fourth objection stressed that Nauru had achieved independence on 31 January 1968 and that, as regards rehabilitation of the lands, it was not until December 1988 that that State formally "raised with Australia and the other former Administering Powers its position". Australia therefore contended that Nauru's claim was inadmissible on the ground that it had not been submitted within a reasonable time.

The Court recognized that, even in the absence of any applicable treaty provision, delay on the part of a claimant State might render an application inadmissible. It noted, however, that international law did not lay down any specific time-limit in that regard. It was therefore for the Court to determine in the light of the circumstances of each case whether the passage of time rendered an application inadmissible. The Court then took note of the fact that Nauru had been officially informed, at the latest by a letter of 4 February 1969, of the position of Australia on the subject of rehabilitation of the phosphate lands worked out before 1 July 1967. Nauru took issue with that position in writing only on 6 October 1983. In the meantime, however, as stated by Nauru and not contradicted by Australia, the question had on two occasions been raised by the President of Nauru with the competent Australian authorities. The Court considered that, given the nature of relations between Australia and Nauru, as well as the steps thus taken, Nauru's Application had not been rendered inadmissible by passage of time, but that it would be for the Court, in due time, to ensure that

Nauru's delay in seising it would in no way cause prejudice to Australia with regard to both the establishment of the facts and the determination of the content of the applicable law.

5. The Court further rejected Australia's fifth objection to the effect that "Nauru has failed to act consistently and in good faith in relation to rehabilitation" and that therefore "the Court in exercise of its discretion, and in order to uphold judicial propriety should . . . decline to hear the Nauruan claims". The Court found that the Application of Nauru had been properly submitted in the framework of the remedies open to it and that there had been no abuse of process.

III. *Objection based on the fact that New Zealand and the United Kingdom were not parties to the proceedings* (paras. 39-57)

6. The Court then considered the objection by Australia based on the fact that New Zealand and the United Kingdom were not parties to the proceedings.

In order to assess the validity of this objection, the Court first referred to the Mandate and Trusteeship regimes and the way in which they had applied to Nauru. It noted that the three Governments mentioned in the Trusteeship Agreement had constituted, in the very terms of that Agreement, "the Administering Authority" for Nauru; that this Authority had not had an international legal personality distinct from those of the States thus designated; and that, of those States, Australia had played a very special role established by the Trusteeship Agreement of 1947, by the Agreements of 1919, 1923 and 1965, and by practice.

The Court observed that Australia's preliminary objection in this respect appeared to contain two branches, the first of which could be dealt with briefly. Australia first contended that, in so far as Nauru's claims were based on the conduct of Australia as one of the three States making up the Administering Authority under the Trusteeship Agreement, the nature of the responsibility in that respect was such that a claim might only be brought against the three States jointly, and not against one of them individually. The Court did not consider that any reason had been shown why a claim brought against only one of the three States should be declared inadmissible *in limine litis* merely because that claim raised questions of the administration of the Territory, which was shared with two other States. It could not be denied that Australia had had obligations under the Trusteeship Agreement, in its capacity as one of the three States forming the Administering Authority, and there was nothing in the character of that Agreement which debarred the Court from considering a claim of a breach of those obligations by Australia.

Secondly, Australia argued that, since together with itself, New Zealand and the United Kingdom had made up the Administering Authority, any decision of the Court as to the alleged breach by Australia of its obligations under the Trusteeship Agreement had necessarily to involve a finding as to the discharge by those two other States of their obligations in that respect, which would be contrary to the fundamental principle that the jurisdiction of the Court derived solely from the consent of States. The question that arose was accordingly whether, given the régime thus described, the Court might, without the consent of New Zealand and the United Kingdom, deal with an Application brought against Australia alone.

The Court then examined its own case-law on questions of this kind (cases concerning the *Monetary Gold Removed from Rome in 1943* (*Preliminary Ques-*

tion), *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States of America*) and the *Land, Island and Maritime Frontier Dispute* (*El Salvador/Honduras*)). It referred to the fact that national courts, for their part, had more often than not the necessary power to order *proprio motu* the joinder of third parties who might be affected by the decision to be rendered; and that that solution made it possible to settle a dispute in the presence of all the parties concerned. It went on to consider that on the international plane, however, the Court had no such power. Its jurisdiction depended on the consent of States and, consequently, the Court might not compel a State to appear before it, even by way of intervention. A State, however, which was not a party to a case was free to apply for permission to intervene in accordance with Article 62 of the Statute. But the absence of such a request for intervention in no way precluded the Court from adjudicating upon the claims submitted to it, provided that the legal interests of the third State which might possibly be affected did not form the very subject-matter of the decision applied for. Where the Court was so entitled to act, the interests of the third State which was not a party to the case were protected by Article 59 of the Statute of the Court, which provided that "The decision of the Court has no binding force except between the parties and in respect of that particular case."

The Court then found that in the present case, the interests of New Zealand and the United Kingdom did not constitute the very subject-matter of the judgment to be rendered on the merits of Nauru's Application and that, although a finding by the Court regarding the existence or the content of the responsibility attributed to Australia by Nauru might well have implications for the legal situation of the two other States concerned, no finding in respect of that legal situation would be needed as a basis for the Court's decision on Nauru's claims against Australia. Accordingly, the Court could not decline to exercise its jurisdiction and the objection put forward in this respect by Australia had to be rejected.

IV. *Objections to the claim by Nauru concerning the overseas assets of the British Phosphate Commissioners* (paras. 58-71)

7. Finally, the Court examined the objections addressed by Australia to the claim by Nauru concerning the overseas assets of the British Phosphate Commissioners. At the end of its Memorial on the merits, Nauru had requested the Court to adjudge and declare that:

> "the Republic of Nauru has a legal entitlement to the Australian allocation of the overseas assets of the British Phosphate Commissioners which were marshalled and disposed of in accordance with the trilateral Agreement concluded on 9 February 1987"

and that:

> "the Respondent State is under a duty to make appropriate reparation in respect of the loss caused to the Republic of Nauru as a result of . . . its failure to recognize the interest of Nauru in the overseas assets of the British Phosphate Commissioners".

The British Phosphate Commissioners had been established by article 3 of the Agreement of 2 July 1919 between the United Kingdom, Australia and New Zealand, with one Commissioner to be appointed by each of the Partner Governments. These Commissioners had managed an enterprise entrusted with the exploitation of the phosphate deposits on the island of Nauru.

Australia maintained, *inter alia*, that Nauru's claim concerning the overseas assets of the British Phosphate Commissioners was inadmissible on the ground that it was a new claim which appeared for the first time in the Nauruan Memorial; that Nauru had not proved the existence of any real link between that claim, on the one hand, and its claim relating to the alleged failure to observe the Trusteeship Agreement and to the rehabilitation of the phosphate lands, on the other; and that the claim in question sought to transform the dispute brought before the Court into a dispute that would be of a different nature.

The Court concluded that the Nauruan claim relating to the overseas assets of the British Phosphate Commissioners was inadmissible inasmuch as it constituted, both in form and in substance, a new claim, and as the subject of the dispute originally submitted to the Court would have been transformed if it had entertained that claim. It referred in that connection to Article 40, paragraph 1, of the Statute of the Court which provided that the "subject of the dispute" was to be indicated in the Application; and to Article 38, paragraph 2, of the Rules of Court which required "the precise nature of the claim" to be specified in the Application.

The Court therefore found that the preliminary objection raised by Australia on that point was well founded, and that it was not necessary for the Court, at that juncture, to consider the other objections of Australia with regard to the submissions of Nauru concerning the overseas assets of the British Phosphate Commissioners.

Operative paragraph (para. 72)

"THE COURT,

(1) (*a*) *rejects*, unanimously, the preliminary objection based on the reservation made by Australia in its declaration of acceptance of the compulsory jurisdiction of the Court;

(*b*) *rejects*, by twelve votes to one, the preliminary objection based on the alleged waiver by Nauru, prior to accession to independence, of all claims concerning the rehabilitation of the phosphate lands worked out prior to 1 July 1967;

IN FAVOUR: *President* Sir Robert Jennings; *Judges* Lachs, Ago, Schwebel, Bedjaoui, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley, Ranjeva;

AGAINST: *Vice-President* Oda;

(*c*) *rejects*, by twelve votes to one, the preliminary objection based on the termination of the Trusteeship over Nauru by the United Nations;

IN FAVOUR: *President* Sir Robert Jennings; *Judges* Lachs, Ago, Schwebel, Bedjaoui, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley, Ranjeva;

AGAINST: *Vice-President* Oda;

(*d*) *rejects*, by twelve votes to one, the preliminary objection based on the effect of the passage of time on the admissibility of Nauru's Application;

IN FAVOUR: *President* Sir Robert Jennings; *Judges* Lachs, Ago, Schwebel, Bedjaoui, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley, Ranjeva;

AGAINST: *Vice-President* Oda;

(*e*) *rejects*, by twelve votes to one, the preliminary objection based on Nauru's alleged lack of good faith;

IN FAVOUR: *President* Sir Robert Jennings; *Judges* Lachs, Ago, Schwebel, Bedjaoui, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley, Ranjeva;

AGAINST: *Vice-President* Oda;

(*f*) *rejects*, by nine votes to four, the preliminary objection based on the fact that New Zealand and the United Kingdom are not parties to the proceedings;

IN FAVOUR: *Judges* Lachs, Bedjaoui, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley, Ranjeva;

AGAINST: *President* Sir Robert Jennings; *Vice-President* Oda; *Judges* Ago, Schwebel;

(*g*) *upholds*, unanimously, the preliminary objection based on the claim concerning the overseas assets of the British Phosphate Commissioners being a new one;

(2) *finds*, by nine votes to four, that, on the basis of Article 36, paragraph 2, of the Statute of the Court, it has jurisdiction to entertain the Application filed by the Republic of Nauru on 19 May 1989 and that the said Application is admissible;

IN FAVOUR: *Judges* Lachs, Bedjaoui, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley, Ranjeva;

AGAINST: *President* Sir Robert Jennings; *Vice-President* Oda; *Judges* Ago, Schwebel;

(3) *finds*, unanimously, that the claim concerning the overseas assets of the British Phosphate Commissioners, made by Nauru in its Memorial of 20 April 1990, is inadmissible."

Judge Shahabuddeen appended a separate opinion to the Judgment;[325] President Sir Robert Jennings, Vice-President Oda and Judges Ago and Schwebel appended dissenting opinions.[326]

By an Order of 29 June 1992,[327] the President of the Court, having ascertained the views of the Parties, fixed 29 March 1993 as the time-limit for the filing of the Counter-Memorial of Australia.

4. *Territorial Dispute (Libyan Arab Jamahiriya v. Chad)*

By an Order of 14 April 1992,[328] the Court, having ascertained the views of the Parties, decided to authorize the presentation by each Party of a Reply within the same time-limit, and fixed 14 September 1992 as the time-limit for those Replies. Both Replies were filed within the prescribed time-limit.

Oral proceedings were held from 14 June to 14 July 1993. During 19 public sittings, the Court heard statements on behalf of the Libyan Arab Jamahiriya and of Chad. A Member of the Court put a question to one of the Parties.

The President of Chad, His Excellency Colonel Idriss Deby, attended the opening sitting of 14 June.

5. *East Timor (Portugal v. Australia)*

By an Order of 19 June 1992,[329] the Court, having ascertained the views of the Parties, fixed 1 December 1992 as the time-limit for the filing of a Reply by Portugal and 1 June 1993 for the filing of a Rejoinder by Australia. The Reply was filed within the prescribed time-limit.

6. *Maritime Delimitation between Guinea-Bissau and Senegal (Guinea-Bissau v. Senegal)*

After the two Governments concerned had had time to study the judgment of 12 November 1991,[330] the President of the Court convened a meeting with the representatives of the Parties on 28 February 1992, at which however they requested that no time-limit be fixed for the initial pleadings in the case, pending the outcome of negotiations on the question of maritime delimitation; those negotiations were to continue for six months in the first instance, after which, if they had not been successful, a further meeting would be held with the President.

No indications having been received from the Parties as to the state of their negotiations, the President convened a further meeting with the Agents on 6 October 1992. The Agents stated that some progress had been made towards an agreement, and a joint request was made by the two Parties that a further period of three months, with a possible further extension of three months, be allowed for continuation of the negotiations. The President agreed to this, and expressed satisfaction at the efforts being made by the Parties to resolve their dispute by negotiation, in the spirit of the recommendation made in the Judgment of 12 November 1991.

7. *Passage through the Great Belt (Finland v. Denmark)*

By a letter dated 3 September 1992, the Agent of Finland, referring to the passage that "pending a decision of the Court on the merits, any negotiation between the Parties with a view to achieving a direct and friendly settlement is to be welcomed", stated that a settlement of the dispute had been attained and accordingly notified the Court of the discontinuance of the case by Finland.

By a letter dated 4 September 1992, the Agent of Denmark, to whom a copy of the letter from the Agent of Finland had been communicated, stated that Denmark had no objection to the discontinuance.

Consequently, the President of the Court, on 10 September 1992, made an Order recording the discontinuance of the proceedings and directing the removal of the case from the Court's list.[331]

8. *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*

By an Order of 26 June 1992,[332] the Court, having ascertained the views of the Parties, directed that a Reply by the Applicant and a Rejoinder by the Respondent be filed on the questions of jurisdiction and admissibility. It fixed 28 September 1992 as the time-limit for the Reply of Qatar and 29 December 1992 for the Rejoinder of Bahrain. Both the Reply and the Rejoinder were filed within the prescribed time-limits.

Qatar chose Mr. José María Ruda and Bahrain Mr. Nicolas Valticos to sit as judges ad hoc.

9, 10. *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident of Lockerbie (Libyan Arab Jamahiriya v. United Kingdom) and Questions of Interpretation and Application of the 1971 Montreal Convention arising from Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America)*

On 3 March 1992, the Government of the Socialist People's Libyan Arab Jamahiriya filed in the Registry of the Court two separate Applications instituting proceedings against the Government of the United Kingdom of Great Britain and Northern Ireland and against the Government of the United States of America in respect of a dispute over the interpretation and application of the Montreal Convention of 23 September 1971, a dispute arising from acts resulting in the aerial incident that occurred over Lockerbie, Scotland, on 21 December 1988.

In the Applications, Libya referred to the charging and indictment of two Libyan nationals by the Lord Advocate of Scotland and by a Grand Jury of the United States, respectively, with having caused a bomb to be placed aboard Pan Am flight 103. The bomb subsequently exploded, causing the aeroplane to crash, and all persons aboard were killed.

Libya pointed out that the acts alleged constituted an offence within the meaning of article 1 of the Montreal Convention, which it claimed to be the only appropriate convention in force between the Parties, and claimed that it had fully complied with its own obligations under that instrument, article 5 of which required a State to establish its own jurisdiction over alleged offenders present in its territory in the event of their non-extradition; there was no extradition treaty between Libya and the respective other Parties, and Libya was obliged under article 7 of the Convention to submit the case to its competent authorities for the purpose of prosecution.

Libya contended that the United Kingdom and the United States were in breach of the Montreal Convention through rejection of its efforts to resolve the matter within the framework of international law, including the Convention itself, in that they were placing pressure upon Libya to surrender the two Libyan nationals for trial.

According to the Applications, it had not been possible to settle by negotiation the disputes that had thus arisen, nor had the Parties been able to agree upon the organization of an arbitration to hear the matter. The Libyan Arab Jamahiriya therefore submitted the disputes to the Court on the basis of article 14, paragraph 1, of the Montreal Convention.

Libya requested the Court to adjudge and declare as follows:

(*a*) that Libya has fully complied with all of its obligations under the Montreal Convention,

(*b*) that the United Kingdom and the United States respectively have breached, and are continuing to breach, their legal obligations to Libya under articles 5 (2), 5 (3), 7, 8, 8 (2) and 11 of the Montreal Convention;

(*c*) that the United Kingdom and the United States respectively are under a legal obligation immediately to cease and desist from such breaches and from the use of any and all force or threats against Libya, including the threat

of force against Libya, and from all violations of the sovereignty, territorial integrity, and the political independence of Libya.

Later the same day, Libya made two separate requests to the Court to indicate forthwith the following provisional measures:

(*a*) to enjoin the United Kingdom and the United States respectively from taking any action against Libya calculated to coerce or compel Libya to surrender the accused individuals to any jurisdiction outside of Libya;

(*b*) to ensure that no steps are taken that would prejudice in any way the rights of Libya with respect to the legal proceedings that are the subject of Libya's Applications.

In those requests Libya also requested the President, pending the meeting of the Court, to exercise the power conferred on him by article 74, paragraph 4, of the Rules of Court, to call upon the Parties to act in such a way as to enable any Order the Court might make on Libya's request for provisional measures to have its appropriate effects.

By a letter of 6 March 1992, the Legal Adviser of the United States Department of State, referring to the specific request made by Libya under article 74, paragraph 4, of the Rules of Court, in its request for the indication of provisional measures stated, *inter alia*, that:

> "taking into account both the absence of any concrete showing of urgency relating to the request and developments in the ongoing action by the Security Council and the Secretary-General in this matter ... the action requested by Libya ... is unnecessary and could be misconstrued".

Libya chose Mr. Ahmed S. El-Kosheri to sit as judge ad hoc. He made the solemn declaration required by the Statute and Rules of Court on 26 March 1992, at the opening of the hearings on the requests for the indication of provisional measures.

At that opening, the Vice-President of the Court, exercising the functions of the presidency in the case, referred to the request made by Libya under Article 74, paragraph 4, of the Rules of Court and stated that, after the most careful consideration of all the circumstances then known to him, he had come to the conclusion that it would not be appropriate for him to exercise the discretionary power conferred on the President by that provision.

At five public sittings held on 26, 27 and 28 March 1992, both Parties in each of the two cases presented oral arguments on the request for the indication of provisional mesures. A Member of the Court put questions to both Agents in each of the two cases and the Judge ad hoc. He put a question to the Agent of Libya.

At a public sitting held on 14 April 1992, the Court read the two Orders on the requests for indication of provisional measures filed by Libya.[333] Summaries of the Orders are given below, followed by the text of the operative paragraph.[334]

I. *Summary of the Order in the case of the* Libyan Arab Jamahiriya v. United Kingdom

In its Order, the Court recalled that on 3 March 1992 the Libyan Arab Jamahiriya had instituted proceedings against the United Kingdom in respect of "a dispute ... between Libya and the United Kingdom over the interpretation or

application of the Montreal Convention" of 23 September 1971, a dispute arising from the aerial incident which had occurred over Lockerbie, Scotland, on 21 December 1988 and had led, in November 1991, to the Lord Advocate of Scotland charging two Libyan nationals with, *inter alia*, having "caused a bomb to be placed aboard [Pan Am flight 103] . . . which bomb had exploded causing the aeroplane to crash".

The Court then recited the history of the case. It referred to the allegations and submissions made by Libya in its Application, and in its request for the indication of provisional measures.

The Court further referred to the observations and submissions presented by both Libya and the United Kingdom at the public hearings on the request for the indication of provisional measures held on 26 and 28 March 1992.

The Court then took note of the joint declaration issued on 27 November 1991 by the United Kingdom and the United States of America following on the charges brought by the Lord Advocate of Scotland against the two Libyan nationals in connection with the destruction of Pan Am flight 103, and which was worded as follows:

> "The British and American Governments today declare that the Government of Libya must:
>
> - surrender for trial all those charged with the crime, and accept responsibility for the actions of Libyan officials;
> - disclose all it knows of this crime, including the names of all those responsible, and allow full access to all witnesses, documents and other material evidence, including all the remaining timers;
> - pay appropriate compensation.
>
> We expect Libya to comply promptly and in full."

The Court also took note of the fact that the subject of that declaration had been subsequently considered by the United Nations Security Council, which on 21 January 1992 had adopted resolution 731 (1992), of which the Court quoted, *inter alia*, the following passages:

> "*Deeply concerned* over the results of investigations, which implicate officials of the Libyan Government and which are contained in Security Council documents that include the requests addressed to the Libyan authorities by France, . . . the United Kingdom of Great Britain and Northern Ireland . . . and the United States of America . . . in connection with the legal procedures related to the attacks carried out against Pan American flight 103 and Union de transports aériens flight 772;
>
> . . .
>
> 2. *Strongly deplores* the fact that the Libyan Government has not yet responded effectively to the above requests to cooperate fully in establishing responsibility for the terrorist acts referred to above against Pan American flight 103 and Union de transports aériens flight 772;
>
> 3. *Urges* the Libyan Government immediately to provide a full and effective response to those requests so as to contribute to the elimination of international terrorism."

The Court further noted that on 31 March 1992 (three days after the close of the hearings) the Security Council had adopted resolution 748 (1992) stating, *inter alia*, that the Security Council:

"...

Deeply concerned that the Libyan Government has still not provided a full and effective response to the requests in its resolution 731 (1992) of 21 January 1992,

Convinced that the suppression of acts of international terrorism, including those in which States are directly or indirectly involved, is essential for the maintenance of international peace and security,

...

Determining, in this context, that the failure by the Libyan Government to demonstrate by concrete actions its renunciation of terrorism and in particular its continued failure to respond fully and effectively to the requests in resolution 731 (1992) constitute a threat to international peace and security,

"...

Acting under Chapter VII of the Charter,

1. *Decides* that the Libyan Government must now comply without any further delay with paragraph 3 of resolution 731 (1992) regarding the requests contained in documents S/23306, S/23308 and S/23309;

2. *Decides also* that the Libyan Government must commit itself definitively to cease all forms of terrorist action and all assistance to terrorist groups and that it must promptly, by concrete actions, demonstrate its renunciation of terrorism;

3. *Decides* that, on 15 April 1992, all States shall adopt the measures set out below, which shall apply until the Security Council decides that the Libyan Government has complied with paragraphs 1 and 2 above;

...

7. *Calls upon* all States, including States not members of the United Nations, and all international organizations, to act strictly in accordance with the provisions of the present resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to 15 April 1992."

The Court observed that document S/23308, to which reference had been made in resolution 748 (1992), had included the demands made by the United Kingdom and the United States of America in their joint declaration of 27 November 1991, as set out above.

After having referred to the observations on Security Council resolution 748 (1992) presented by both Parties in response to the Court's invitation, the Court proceeded to state its findings in the following terms;

"38. Whereas the Court, in the context of the present proceedings on a request for provisional measures, has, in accordance with Article 41 of the Statute, to consider the circumstances drawn to its attention as requiring the indication of such measures, but cannot make definitive findings either of fact or of law on the issues relating to the merits, and the right of the Parties to contest such issues at the stage of the merits must remain unaffected by the Court's decision;

39. Whereas both Libya and the United Kingdom, as Members of the United Nations, are obliged to accept and carry out the decisions of the Security Council in accordance with Article 25 of the Charter; whereas the Court, which is at the stage of proceedings on provisional measures, considers that prima facie this obligation extends to the decision contained in resolution 748 (1992); and whereas, in accordance with Article 103 of the Charter, the obligations of the Parties in that respect prevail over their obligations under any other international agreement, including the Montreal Convention;

40. Whereas the Court, while thus not at this stage called upon to determine definitively the legal effect of Security Council resolution 748 (1992), considers that, whatever the situation previous to the adoption of that resolution, the rights claimed by Libya under the Montreal Convention cannot now be regarded as appropriate for protection by the indication of provisional measures;

41. Whereas, furthermore, an indication of the measures requested by Libya would be likely to impair the rights which appear prima facie to be enjoyed by the United Kingdom by virtue of Security Council resolution 748 (1992);

42. Whereas, in order to pronounce on the present request for provisional measures, the Court is not called upon to determine any of the other questions which have been raised before it in the present proceedings, including the question of its jurisdiction to entertain the merits of the case; and whereas the decision given in these proceedings in no way prejudges any such question, and leaves unaffected the rights of the Government of Libya and the Government of the United Kingdom to submit arguments in respect of any of these questions;

43. For these reasons,

THE COURT,

By eleven votes to five,

Finds that the circumstances of the case are not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures.

IN FAVOUR: *Vice-President* Oda, *Acting President; President* Sir Robert Jennings; *Judges* Lachs, Ago, Schwebel, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley;

AGAINST: *Judges* Bedjaoui, Weeramantry, Ranjeva, Ajibola; *Judge* ad hoc El-Kosheri."

II. *Summary of the Order in the case of the* Libyan Arab Jamahiriya v. United States of America

In its Order, the Court recalled that on 3 March 1992 the Libyan Arab Jamahiriya had instituted proceedings against the United States in respect of "a dispute ... between Libya and the United States over the interpretation or application of the Montreal Convention" of 23 September 1971, a dispute arising from the aerial incident which had occurred over Lockerbie, Scotland, on 21 December 1988 and had led to a Grand Jury of the United States District Court for the District of Columbia, indicting, on 14 November 1991, two Libyan nationals,

charging, *inter alia*, that they had "caused a bomb to be placed aboard [Pan Am flight 103] ... which bomb had exploded causing the aeroplane to crash".

The Court then recited the history of the case. It referred to the allegations and submissions made by Libya in its Application, and in its request for the indication of provisional measures.

The Court further referred to the observations and submissions presented by both Libya and the United States at the public hearings on the request for the indication of provisional measures held on 26, 27 and 28 March 1992.

The Court then took note of the joint declaration issued on 27 November 1991 by the United States of America and the United Kingdom following on the charges brought by a Grand Jury of the United States District Court for the District of Columbia against the two Libyan nationals in connection with the destruction of Pan Am flight 103, and which was worded as follows:

> "The British and American Governments today declare that the Government of Libya must:
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> - surrender for trial all those charged with the crime; and accept responsibility for the actions of Libyan officials;
> - disclose all it knows of this crime, including the names of all those responsible, and allow full access to all witnesses, documents and other material evidence, including all the remaining timers;
> - pay appropriate compensation.
>
> We expect Libya to comply promptly and in full."

The Court also took note of the fact that the subject of that declaration had been subsequently considered by the United Nations Security Council, which on 21 January 1992 had adopted resolution 731 (1992), of which the Court quoted, *inter alia*, the following passages:

> "*Deeply concerned* over the results of investigations, which implicate officials of the Libyan Government and which are contained in Security Council documents that include the requests addressed to the Libyan authorities by France, ... the United Kingdom of Great Britain and Northern Ireland ... and the United States of America ... in connection with the legal procedures related to the attacks carried out against Pan American flight 103 and Union de transports aériens flight 772,
>
> ...
>
> 2. *Strongly deplores* the fact that the Libyan Government has not yet responded effectively to the above requests to cooperate fully in establishing responsibility for the terrorist acts referred to above against Pan American flight 103 and Union de transports aériens flight 772;
>
> 3. *Urges* the Libyan Government immediately to provide a full and effective response to those requests so as to contribute to the elimination of international terrorism;"

The Court further noted that, on 31 March 1992 (three days after the close of the hearings), the Security Council had adopted resolution 748 (1992) stating, *inter alia*, that the Security Council:

> "...
>
> *Deeply concerned* that the Libyan Government has still not provided a full and effective response to the requests in its resolution 731 (1992) of 21 January 1992,

Convinced that the suppression of acts of international terrorism, including those in which States are directly or indirectly involved, is essential for the maintenance of international peace and security,

. . .

Determining, in this context, that the failure by the Libyan Government to demonstrate by concrete actions its renunciation of terrorism and in particular its continued failure to respond fully and effectively to the requests in resolution 731 (1992) constitute a threat to international peace and security,

. . .

Acting under Chapter VII of the Charter,

1. *Decides* that the Libyan Government must now comply without any further delay with paragraph 3 of resolution 731 (1992) regarding the requests contained in documents S//23306, S/23308 and S/23309;

2. *Decides also* that the Libyan Government must commit itself definitively to cease all forms of terrorist action and all assistance to terrorist groups and that it must promptly, by concrete actions, demonstrate its renunciation of terrorism;

3. *Decides* that, on 15 April 1992, all States shall adopt the measures set out below, which shall apply until the Security Council decides that the Libyan Government has complied with paragraphs 1 and 2 above;

. . .

7. *Calls upon* all States, including States not members of the United Nations, and all international organizations, to act strictly in accordance with the provisions of the present resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to 15 April 1992."

The Court observed that document S/23308, to which reference had been made in resolution 748 (1992), had included the demands made by the United States of America and the United Kingdom in their joint declaration of 27 November 1991, as set out above.

After having referred to the observations on Security Council resolution 748 (1992) presented by both Parties in response to the Court's invitation (as well as by the Agent of the United States in an earlier communication), the Court proceeded to state its findings in the following terms:

"41. Whereas, the Court, in the context of the present proceedings on a request for provisional measures, has, in accordance with Article 41 of the Statute, to consider the circumstances drawn to its attention as requiring the indication of such measures, but cannot make definitive findings either of fact or of law on the issues relating to the merits, and the right of the Parties to contest such issues at the stage of the merits must remain unaffected by the Court's decision;

42. Whereas both Libya and the United States, as Members of the United Nations, are obliged to accept and carry out the decisions of the Security Council in accordance with Article 25 of the Charter; whereas the Court, which is at the stage of proceedings on provisional measures, considers that prima facie this obligation extends to the decision contained in

resolution 748 (1992); and whereas, in accordance with Article 103 of the Charter, the obligations of the Parties in that respect prevail over their obligations under any other international agreement, including the Montreal Convention;

43. Whereas the Court, while thus not at this stage called upon to determine definitively the legal effect of Security Council resolution 748 (1992), considers that, whatever the situation previous to the adoption of that resolution, the rights claimed by Libya under the Montreal Convention cannot now be regarded as appropriate for protection by the indication of provisional measures;

44. Whereas, furthermore, an indication of the measures requested by Libya would be likely to impair the rights which appear prima facie to be enjoyed by the United States by virtue of Security Council resolution 748 (1992);

45. Whereas, in order to pronounce on the present request for provisional measures, the Court is not called upon to determine any of the other questions which have been raised before it in the present proceedings, including the question of its jurisdiction to entertain the merits of the case; and whereas the decision given in these proceedings in no way prejudges any such question, and leaves unaffected the rights of the Government of Libya and the Government of the United States to submit arguments in respect of any of these questions;

46. For these reasons,

THE COURT,

By eleven votes to five,

Finds that the circumstances of the case are not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures.

IN FAVOUR: *Vice-President* Oda, *Acting President; President* Sir Robert Jennings; *Judges* Lachs, Ago, Schwebel, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley;

AGAINST: *Judges* Bedjaoui, Weeramantry, Ranjeva, Ajibola; *Judge* ad hoc El-Kosheri."

*

Acting President Oda[335] and Judge Ni[336] each appended a declaration to the Orders of the Court; Judges Evensen, Tarassov, Guillaume and Aguilar Mawdsley a joint declaration.[337] Judges Lachs[338] and Shahabuddeen[339] appended separate opinions; and Judges Bedjaoui,[340] Weeramantry,[341] Ranjeva,[342] Ajibola[343] and Judge ad hoc El-Kosheri[344] appended dissenting opinions to the Orders.

*

By Orders of 19 June 1992,[345] the Court, having ascertained the views of the Parties at a meeting held on 5 June 1992 with the Vice-President of the Court, exercising the function of the presidency in the two cases, fixed 20 December 1993 as the time-limit for the filing of the Memorial of the Libyan Arab Jamahiriya and 20 June 1995 for the filing of the Counter-Memorials of the United Kingdom and the United States of America.

11. *Oil Platforms (Islamic Republic of Iran v. United States of America)*

On 2 November 1992, the Islamic Republic of Iran filed in the Registry of the Court an Application instituting proceedings against the United States of America with respect to the destruction of Iranian oil platforms.

The Islamic Republic founded the jurisdiction of the Court for the purposes of these proceedings on article XXI (2) of the Treaty of Amity, Economic Relations and Consular Rights between the United States of America and Iran, signed at Tehran on 15 August 1955.

In its Application, the Islamic Republic alleged that the destruction caused by several warships of the United States Navy, on 19 October 1987 and 18 April 1988, to three offshore oil production complexes, owned and operated for commercial purposes by the National Iranian Oil Company, constituted a fundamental breach of various provisions of the Treaty of Amity and of international law. In this connection Iran referred in particular to articles I and X (1) of the Treaty which provide respectively: "There shall be firm and enduring peace and sincere friendship between the United States of America and Iran", and "Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation".

The Islamic Republic accordingly requested the Court to adjudge and declare as follows:

> "(*a*) that the Court has jurisdiction under the Treaty of Amity to entertain the dispute and to rule upon the claims submitted by the Islamic Republic;
>
> (*b*) that in attacking and destroying the oil platforms referred to in the Application on 19 October 1987 and 18 April 1988, the United States breached its obligations to the Islamic Republic, *inter alia*, under article I and X (1) of the Treaty of Amity and international law;
>
> (*c*) that in adopting a patently hostile and threatening attitude towards the Islamic Republic that culminated in the attack and destruction of the Iranian oil platforms, the United States breached the object and purpose of the Treaty of Amity, including articles I and X (1), and international law;
>
> (*d*) that the United States is under an obligation to make reparations to the Islamic Republic for the violation of its international legal obligations in an amount to be determined by the Court at a subsequent stage of the proceedings. The Islamic Republic reserves the right to introduce and present to the Court in due course a precise evaluation of the reparations owed by the United States; and
>
> (*e*) any other remedy the Court may deem appropriate."

By an Order of 4 December 1992,[346] the President of the Court, taking into account an agreement of the Parties, fixed 31 May 1993 as the time-limit for the filing of the Memorial of the Islamic Republic of Iran and 30 November 1993 for the filing of the Counter-Memorial of the United States.

B. Contentious cases before a Chamber

Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)

At a public sitting held on 11 September 1992, the Chamber delivered its judgment,[347] a summary of which is given below, followed by the text of the operative paragraphs.[348]

I. *Qualités* (paras. 1-26)

The Chamber recapitulated the successive phases of the proceedings, namely: notification to the Registrar, on 11 December 1986, of the Special Agreement signed on 24 May 1986 (in force on 1 October 1986) for the submission to a chamber of the Court of a dispute between the two States; formation by the Court, on 8 May 1987, of the Chamber to deal with the case; filing by Nicaragua, on 17 November 1989, of an Application for permission to intervene in the case; Order by the Court, of 28 February 1990, on the question whether Nicaragua's Application for permission to intervene was a matter within the competence of the full Court or of the Chamber; Judgment of the Chamber of 13 September 1990 acceding to Nicaragua's application for permission to intervene (but solely in respect of the question of the status of the waters of the Gulf of Fonseca); holding of oral proceedings.

Article 2 of the Special Agreement, which defined the subject of the dispute, read, in an agreed English translation:

"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."

The Judgment then quoted the submissions of the Parties, and the "conclusions" of the intervening State, as formulated at the various stages of the proceedings.

II. *General introduction* (paras. 27-39)

The dispute before the Chamber had three elements: a dispute over the land boundary; a dispute over the legal situation of islands (in the Gulf of Fonseca); and a dispute over the legal situation of maritime spaces (within and outside the Gulf of Fonseca).

The two Parties (and the intervening State) came into being with the break-up of the Spanish Empire in Central America; their territories corresponded to administrative subdivisions of that Empire. It was from the outset accepted that the new international boundaries should, in accordance with the principle generally applied in Spanish America of the *uti possidetis juris*, follow the colonial administrative boundaries.

After the independence of Central America from Spain was proclaimed on 15 September 1821, Honduras and El Salvador first made up, together with Costa Rica, Guatemala and Nicaragua, the Federal Republic of Central America, corresponding to the former Captaincy-General of Guatemala or Kingdom of Guatemala. On the disintegration of that Republic in 1839, El Salvador and Honduras, along with the other component States, became separate States.

The Chamber outlined the development of the three elements of the dispute, beginning with the genesis of the island dispute in 1854 and of the land dispute in 1861. Border incidents had led to tension and subsequently to armed conflict in 1969, but in 1972 El Salvador and Honduras had been able to agree on the major part of their land boundary, which had not yet been delimited, leaving however six sectors to be settled. A mediation process begun in 1978 had led to a General Treaty of Peace, signed and ratified in 1980 by the two Parties, which had defined the agreed sections of the boundary.

The Treaty further provided that a Joint Frontier Commission should delimit the frontier in the remaining six sectors and "determine the legal situation of the islands and the maritime spaces". It provided that if within five years total agreement had not been reached, the Parties would, within six months, negotiate and conclude a special agreement to submit any outstanding controversy to the International Court of Justice.

As the Commission did not accomplish its task within the time fixed, the Parties negotiated and concluded on 24 May 1986 the Special Agreement mentioned above.

III. *The land boundary: introduction* (paras. 40-67)

The Parties agreed that the fundamental principle for determining the land frontier was the *uti possidetis juris*. The Chamber noted that the essence of the agreed principle was its primary aim of securing respect for the territorial boundaries at the time of independence, and its application had resulted in colonial administrative boundaries being transformed into international frontiers.

In Spanish Central America there had been administrative boundaries of different kinds or degrees, and the jurisdictions of general administrative bodies did not necessarily coincide territorially with those of bodies possessing particular or special jurisdiction. In addition to the various civil jurisdictions there were ecclesiastical ones, which the main administrative units had to follow in principle.

The Parties had indicated to which colonial administrative divisions (provinces) they claimed to have succeeded. The problem was to identify the areas, and the boundaries, which corresponded to these provinces, which in 1821 became respectively El Salvador and Honduras. No legislative or similar material indicating this had been produced, but the Parties had submitted, *inter alia*, documents referred to collectively as "titles" (*títulos*), concerning grants of land by the Spanish Crown in the disputed areas, from which, it was claimed, the provincial boundaries could be deduced.

The Chamber then analysed the various meanings of the term "title". It concluded that, reserving, for the present, the special status El Salvador attributed to "formal title-deeds to commons", none of the titles produced recording grants of land to individuals or Indian communities could be considered as "titles" in the same sense as, for example, a Spanish Royal Decree attributing certain areas to a particular administrative unit; they were rather comparable to "colonial *effectivités*" as defined in a previous case, i.e., "the conduct of the administrative authorities as proof of the effective exercise of territorial jurisdiction in the region during the colonial period".[349] In some cases the grant of a title had not been perfected, but the record, particularly of a survey, remained a "colonial *effectivité*" which might serve as evidence of the position of a provincial boundary.

Referring to the seven sectors of the boundary agreed in the General Treaty of Peace, the Chamber assumed that the agreed boundary had been arrived at by applying principles and processes similar to those urged upon the Chamber for the non-agreed sectors. Observing the predominance of local features, particularly rivers, in the definition of the agreed sectors, the Chamber had taken some account of the suitability of certain topographical features to provide an identifiable and convenient boundary. The Chamber was here appealing not so

much to any concept of "natural frontiers", but rather to a presumption underlying the boundaries on which the *uti possidetis juris* operated.

Under article 5 of the Special Agreement, the Chamber was to take into account the rules of international law applicable between the Parties, "including, where pertinent, the provisions of" the Treaty. That presumably meant that the Chamber should also apply, where pertinent, even those articles which in the Treaty were addressed specifically to the Joint Frontier Commission. One of these was article 26 of the Treaty, to the effect that the Commission should take as a basis for delimitation the documents issued by the Spanish Crown or any other Spanish authority, secular or ecclesiastical, during the colonial period, and indicating the jurisdictions or limits of territories or settlements, as well as other evidence and arguments of a legal, historical, human or any other kind, brought before it by the Parties and admitted under international law.

Drawing attention to the difference between its task and that of the Commission, which had merely to propose a frontier line, the Chamber observed that article 26 was not an applicable law clause, but rather a provision about evidence. In that light, the Chamber commented on one particular class of titles, referred to as the "formal title-deeds to commons", for which El Salvador had claimed a particular status in Spanish colonial law, that of acts of the Spanish Crown directly determining the extent of the territorial jurisdiction of an administrative division. Those titles, the so-called *títulos ejidales*, were, according to El Salvador, the best possible evidence in relation to the application of the *uti possidetis juris* principle.

The Chamber did not accept any interpretation of article 26 as signifying that the Parties had by treaty adopted a special rule or method of determination of the *uti possidetis juris* boundaries, on the basis of divisions between Indian *poblaciones*. It was the administrative boundaries between Spanish colonial administrative units, not the boundaries between Indian settlements as such, that were transformed into international boundaries in 1821.

El Salvador contended that the commons whose formal title-deeds it relied on were not private properties but belonged to the municipal councils of the corresponding *poblaciones*. Control over those communal lands being exercised by the municipal authorities, and over and above them by those of the colonial province to which the commons had been declared to belong, El Salvador maintained that if such a grant of commons to a community in one province had extended to lands situated within another, the administrative control of the province to which the community belonged had been determinative for the application of the *uti possidetis juris*, i.e., that, on independence, the whole area of the commons had appertained to the State within which the community was situated. The Chamber, which was faced with a situation of this kind in three of six disputed sectors, had however been able to resolve the issue without having to determine that particular question of Spanish colonial law, and therefore saw no reason to attempt to do so.

In the absence of legislative instruments formally defining provincial boundaries, not only land grants to Indian communities but also grants to private individuals afforded some evidence as to the location of boundaries. There must have been a presumption that such grants would normally avoid straddling a boundary between different administrative authorities, and where the provincial boundary location was doubtful the common boundaries of two grants

by different provincial authorities could well have become the provincial boundary. The Chamber therefore considered the evidence of each of these grants on its merits and in relation to other arguments, but without treating them as necessarily conclusive.

With regard to the land that had not been the subject of grants of various kinds by the Spanish Crown, referred to as crown lands, *tierras realengas*, the Parties agreed that such land was not unattributed but appertained to the one province or the other and accordingly passed, on independence, into the sovereignty of the one State or the other.

With regard to post-independence grants or titles, the so-called "republican titles", the Chamber considered that they might well provide some evidence of the position in 1821 and both Parties had offered them as such.

El Salvador, while admitting that the *uti possidetis juris* was the primary element for determining the land boundary, also put forward, in reliance on the second part of article 26, arguments referred to as either "arguments of a human nature" or arguments based on *effectivités*. Honduras also recognized a certain confirmatory role for *effectivités* and had submitted evidence of acts of administration of its own for that purpose.

El Salvador had first advanced arguments and material relating to demographic pressures in El Salvador creating a need for territory, as compared with the relatively sparsely populated Honduras, and to the superior natural resources said to be enjoyed by Honduras. El Salvador, however, did not appear to claim that a frontier based on the principle of *uti possidetis juris* could be adjusted subsequently (except by agreement) on the ground of unequal population density. The Chamber would not lose sight of that dimension of the matter, which was however without direct legal incidence.

El Salvador also relied on the alleged occupation of disputed areas by Salvadorians, their ownership of land in those areas, the supply by it of public services there and its exercise in the areas of government powers, and claimed, *inter alia*, that the practice of effective administrative control had demonstrated an "animus" to possess the territories. Honduras rejected any argument of "effective control", suggesting that the concept only referred to administrative control prior to independence. It considered that, at least since 1884, no acts of sovereignty in the disputed areas could be relied on in view of the duty to respect the status quo in a disputed area. It had however presented considerable material to show that Honduras could also rely on arguments of a human kind.

The Chamber considered that it might have regard, in certain instances, to documentary evidence of post-independence *effectivités* affording indications of the 1821 *uti possidetis juris* boundary, provided that a relationship existed between the *effectivités* and the determination of that boundary.

El Salvador had drawn attention to difficulties in collecting evidence in certain areas owing to interference with governmental activities due to acts of violence. The Chamber, while appreciating those difficulties, could not apply a presumption that evidence which was unavailable would, if produced, have supported a particular Party's case, still less a presumption of the existence of evidence not produced. In view of those difficulties, El Salvador had requested the Chamber to consider exercising its functions under Article 66 of the Rules of Court to obtain evidence *in situ*. The Parties had however been informed that the Chamber did not consider it necessary to exercise the functions in question,

nor to exercise its power, under Article 50 of the Statute, to arrange for an inquiry or expert opinion in the case, as El Salvador had also requested it to do.

*

The Chamber subsequently examined, in respect of each disputed sector, the evidence of post-colonial *effectivités*. Even when claims of *effectivité* were given their due weight, it might occur in some areas that, following the delimitation of the disputed sector, nationals of one Party would find themselves in the territory of the other. The Chamber had every confidence that the necessary measures to take account of this would be taken by the Parties.

In connection with the concept of the "critical date" the Chamber observed that there seemed to be no reason why acquiescence or recognition should not operate where there was sufficient evidence to show that the Parties had in effect clearly accepted a variation or an interpretation of the *uti possidetis juris* position.

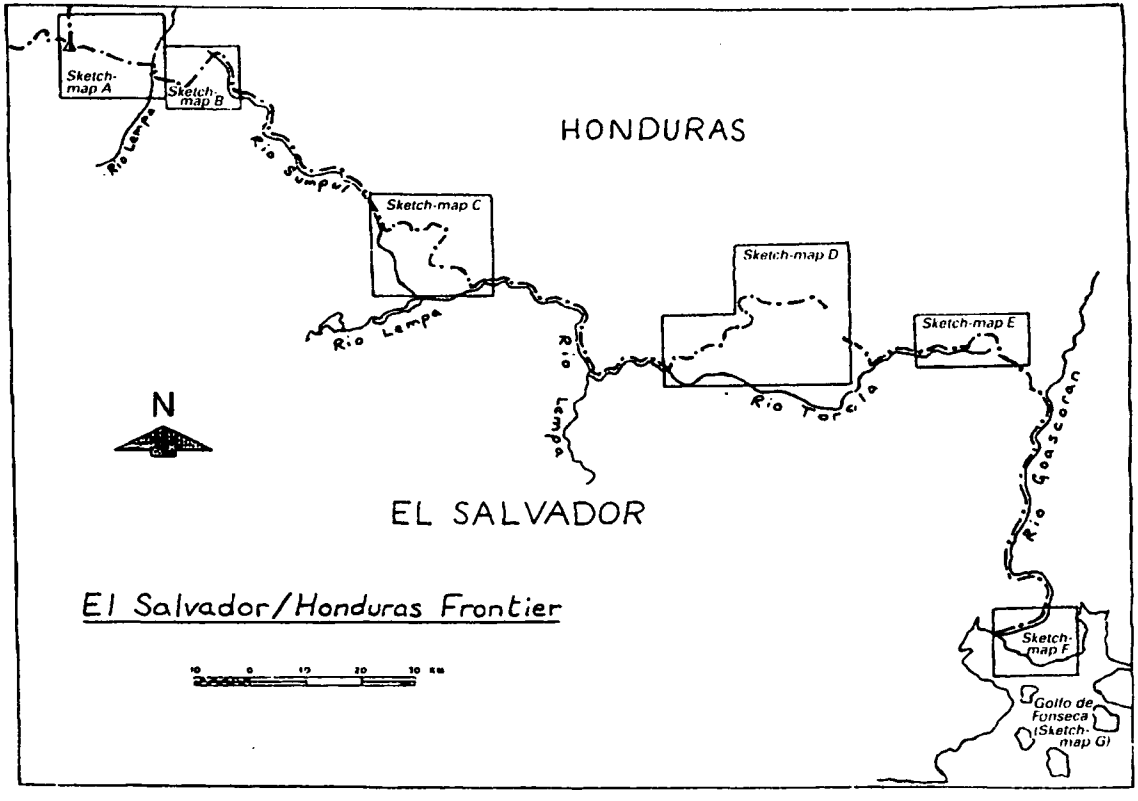
IV. *First sector of the land boundary* (paras. 68-103)

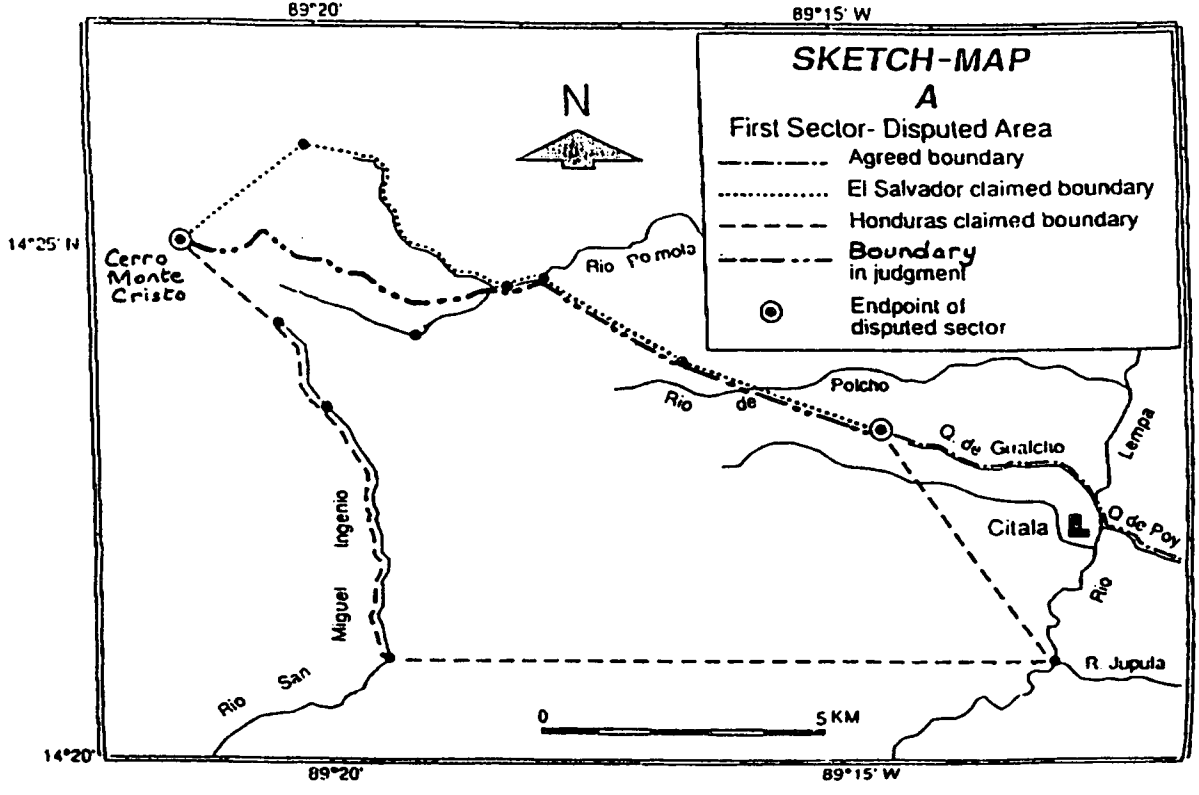
The first disputed sector of the land boundary ran from the agreed tripoint where the frontiers of El Salvador, Guatemala and Honduras converged (Cerro Montecristo) to the summit of the Cerro Zapotal (see sketch-map A annexed).

Both Parties recognized that most of the area between the lines they put forward corresponded to the land that was the subject of a *título ejidal* over the mountain of Tepangüisir, granted in 1776 to the Indian community of San Francisco de Citalá, which had been situated in, and under the jurisdiction of, the province of San Salvador. El Salvador contended that on independence the lands so granted became part of El Salvador, so that in 1821 the boundary of the two provinces had been defined by the north-eastern boundary of the Citalá *ejido*. Honduras, on the other hand, pointed out that when the 1776 title was granted, those lands included in it had been specifically stated to be in the Honduran province of Gracias a Dios, so that the lands had become on independence part of Honduras.

The Chamber considered that it was not required to resolve that question. All negotiations prior to 1972 over the dispute as to the location of the frontier in that sector had been conducted on the basis, accepted by both sides, that it was the boundary between the *ejidos* of Citalá and Ocotepeque that defined the frontier. The frontier corresponding to Honduras's current interpretation of the legal effect of the 1776 Citalá title had first been put forward in negotiations held in 1972. Moreover a title granted by Honduras in 1914, and the position taken by Honduras in the course of tripartite negotiations held between El Salvador, Guatemala and Honduras in 1934-1935, had confirmed the agreement between the Parties that the boundary between Citalá and Ocotepeque defined the frontier between them. After recalling that the effect of the *uti possidetis juris* principle had not been to freeze for all time the provincial boundaries, the Chamber found that Honduras's conduct from 1881 to 1972 might be regarded as acquiescence in a boundary corresponding to that between the Tepangüisir lands of Citalá and those of Ocotepeque.

The Chamber then turned to the question of a triangular area where, according to Honduras, the 1818 title of Ocotepeque penetrated the north-eastern boundary of Citalá, and to the disagreement between the Parties as to the interpretation of the Citalá survey as regards the north-western area.


HONDURAS
EL SALVADOR
Sketch-map A
Sketch-map B
Sketch-map C
Sketch-map D
Sketch-map E
Sketch-map F
Golfo de Fonseca (Sketch-map G)
Río Lempa
Río Sumpul
Río Lempa
Río Lempa
Río Torola
Río Goascoran
N
El Salvador/Honduras Frontier


89°20'
89°15' W
SKETCH-MAP
A
First Sector- Disputed Area
Agreed boundary
El Salvador claimed boundary
Honduras claimed boundary
Boundary in judgment
Endpoint of disputed sector
N
14°25' N
14°20'
Cerro Monte Cristo
Rio Pomola
Rio de Polcho
Q. de Goalcho
Lempa
Citala
Q. de Poy
Rio Ingenio Miguel
Rio San
R. Jupula
0
5 KM

With regard to the triangular area, the Chamber did not consider that such an overlapping would have been consciously made, and that it should only be concluded that an overlap had come about by mistake if there was no doubt that the two titles were not compatible. The identification of the various relevant geographical locations could not however be achieved with sufficient certainty to demonstrate an overlap.

With respect to the disagreement on the boundary of the Citalá title, the Chamber concluded that on that point the Honduran interpretation of the relevant survey record was to be preferred.

The Chamber then turned to the part of the disputed area lying between the lands comprised in the Citalá title and the international tripoint. Honduras contended that since, according to the survey, the land in this area was crown land *(tierras realengas)*, and the survey had been effected in the Province of Gracias a Dios, those lands must have been *tierras realengas* of that province and hence were now part of Honduras.

El Salvador however claimed that area on the basis of *effectivités*, and pointed to a number of villages or hamlets belonging to the municipality of Citalá within the area. The Chamber noted however the absence of evidence that the area or its inhabitants had been under the administration of that municipality. El Salvador also relied on a report by a Honduran Ambassador stating that the lands of the disputed area had belonged to inhabitants of the municipality of Citalá in El Salvador. The Chamber however did not regard that as sufficient, since to constitute an *effectivité* relevant to the delimination of the frontier at least some recognition or evidence was required of the effective administration of the municipality of Citalá in the area, which, it noted, had not been proved.

El Salvador also contended that ownership of land by Salvadorans in the disputed area less than 40 kilometres from the line Honduras claimed as the frontier showed that the area was not part of Honduras, as under the Constitution of Honduras land within 40 kilometres of the frontier might only be acquired or possessed by native Hondurans. The Chamber rejected that contention since at the very least some recognition by Honduras of the ownership of land by Salvadorans would have had to be shown, which was not the case.

The Chamber observed that in the course of the 1934-1935 negotiations agreement had been reached on a particular frontier line in that area. The agreement by the representatives of El Salvador had only been *ad referendum*, but the Chamber noted that while the Government of El Salvador had not ratified the terms agreed upon *ad referendum*, neither had it denounced them; nor had Honduras retracted its consent.

The Chamber considered that it could adopt the 1935 line, primarily since for the most part it followed the watersheds, which provided a clear and unambiguous boundary; it reiterated its view that the suitability of topographical features to provide a readily identifiable and convenient boundary was the material aspect where no conclusion unambiguously pointing to another boundary emerged from the documentary material.

As regards material put forward by Honduras concerning the settlement of Hondurans in the disputed areas and the exercise there of government functions by Honduras, the Chamber found that material insufficient to affect the decision by way of *effectivités*.

The Chamber's conclusion regarding the first disputed sector of the land frontier was as follows:[350]

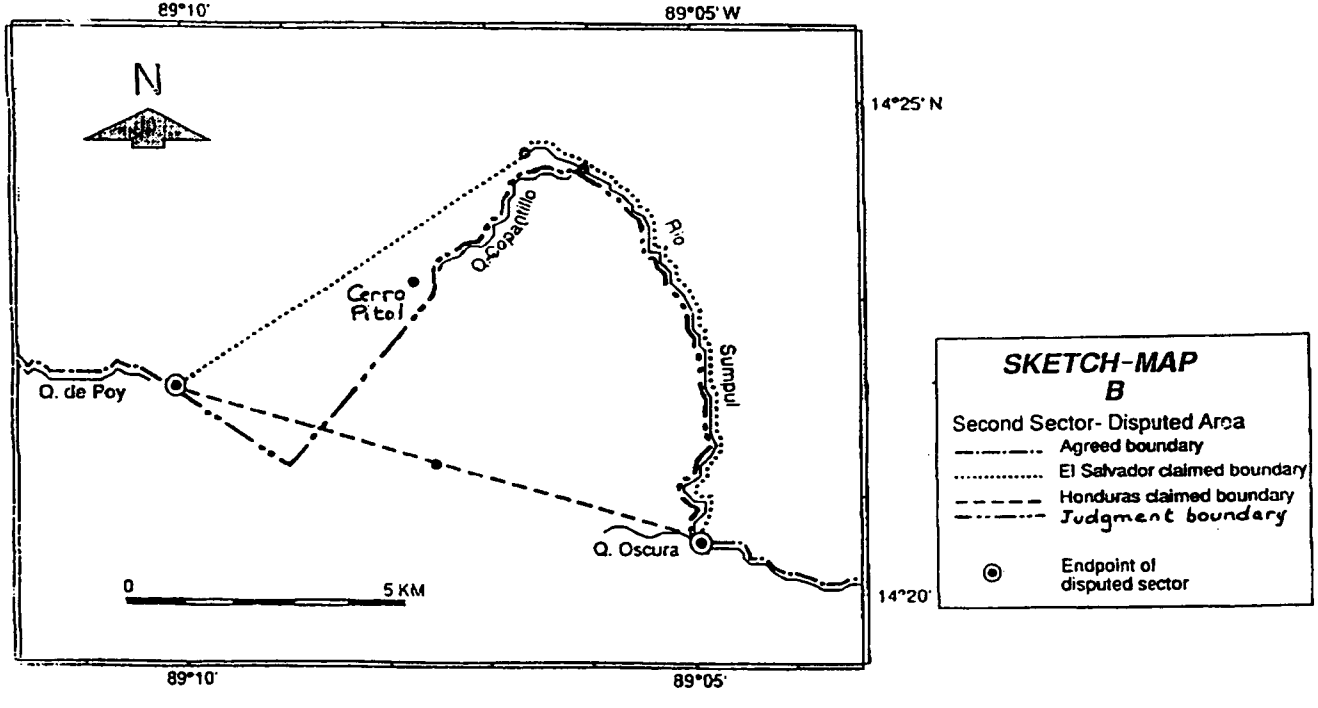
> "It begins at the tripoint with Guatemala, the 'point known as El Trifinio on the summit of the Cerro Montecristo' . . . From this point, the frontier between El Salvador and Honduras runs in a generally easterly direction, following the direct line of watersheds, in accordance with the agreement reached in 1935, and accepted *ad referendum* by the representatives of El Salvador, . . . In accordance with the 1935 agreement . . . , the frontier runs 'along the watershed between the rivers Frío or Sesecapa and Del Rosario as far as the junction of this watershed with the watershed of the basin of the *quebrada* de Pomola' . . . ; 'thereafter in a north-easterly direction along the watershed of the basin of the *quebrada* de Pomola until the junction of this watershed with the watershed between the *quebrada* de Cipresales and the *quebradas* del Cedrón, Peña Dorada and Pomola proper' . . . ; 'from that point, along the last-named watershed as far as the intersection of the centre-lines of the *quebradas* of Cipresales and Pomola' . . . ; 'thereafter, downstream along the centre-line of the *quebrada* de Pomola, until the point on that centre-line which is closest to the boundary marker of Pomola at El Talquezalar; and from that point in a straight line as far as that marker' . . . From the boundary marker of El Talquezalar, the frontier continues in a straight line in a south-easterly direction to the boundary marker of the Cerro Piedra Menuda . . . , and thence in a straight line to the boundary marker of the Cerro Zapotal . . ."

V. *Second sector of the land boundary* (paras. 104-127)

The second disputed sector of the land boundary lay between the Peña de Cayaguanca and the confluence of the stream of Chiquita or Oscura with the river Sumpul (see sketch-map B annexed). Honduras based its claim chiefly on the 1742 title of Jupula, issued in the context of the long-standing dispute between the Indians of Ocotepeque in the Province of Gracias a Dios, and those of Citalá, in the Province of San Salvador. The principal outcome had been the confirmation and agreement of the boundaries of the lands of Jupula, over which the Indians of Ocotepeque had claimed to have rights and which had been attributed to the Indians of Citalá. It was however recorded that the inhabitants of Ocotepeque, having recognized the entitlement of the inhabitants of Citalá to the land surveyed, had also requested "that there be left free for them a mountain called Cayaguanca which is above the Jupula river, which is crown land", and this request had been acceded to.

The Chamber found that the Jupula title was evidence that in 1742 the mountain of Cayaguanca had been *tierras realengas* and since the community of Ocotepeque, in the Province of Gracias a Dios, was to have cultivated it, it concluded that the mountain was *tierras realengas* of that province, for which reason the mountain had on independence to have formed part of Honduras on the basis of the *uti possidetis juris*.

The Chamber then turned to the location and extent of the mountain, which, according to Honduras, had extended over the whole of the disputed area in this sector, a claim disputed by El Salvador. In addition to arguments based on the wording of the 1742 title, El Salvador referred to the 1818 title of Ocotepeque, issued to the community of Ocotepeque to re-establish the boundary markers of its lands, contending that the mountain of Cayaguanca would necessarily have


89°10'
89°05' W
N
14°25' N
Q. Copantillo
Río
Sumpul
Cerro Pitol
Q. de Poy
Q. Oscura
0
5 KM
14°20'
89°10'
89°05'
SKETCH-MAP
B
Second Sector- Disputed Area
Agreed boundary
El Salvador claimed boundary
Honduras claimed boundary
Judgment boundary
Endpoint of disputed sector

been included in that title if it had truly been awarded to the inhabitants of Ocotepeque in 1742. The Chamber did not accept that argument; it found that in 1821 the Indians of Ocotepeque, in the Province of Gracias a Dios, had been entitled to the land resurveyed in 1818, and also to rights of usage over the mountain of Cayaguanca somewhere to the east, and that the area subject to these rights, being *tierras realengas* of the Province of Gracias a Dios, had become Honduran upon independence.

The problem remained, however, of determining the extent of the mountain of Cayaguanca. The Chamber saw no evidence of its boundaries, and in particular none to support the Honduran claim that the area so referred to in 1742 extended as far east as the river Sumpul, as claimed by Honduras.

The Chamber next considered what light might be thrown on the matter by the republican title invoked by El Salvador, referred to as that of Dulce Nombre de la Palma, granted in 1833 to the community of La Palma in El Salvador. The Chamber considered that title significant in that it showed how the *uti possidetis juris* position had been understood when it was granted, i.e., very shortly after independence. The Chamber examined in detail the Parties' conflicting interpretation of the title; it did not accept El Salvador's interpretation whereby it would extend as far west as the Peña de Cayaguanca, and was co-terminous with the land surveyed in 1742 for the Jupula title, and concluded that there was an intervening area not covered by either title. On that basis the Chamber determined the course of the north-western boundary of the title of Dulce Nombre de la Palma; the eastern boundary, as recognized by both Parties, was the river Sumpul.

The Chamber then examined three Honduran republican titles in the disputed area, concluding that they did not conflict with the Dulce Nombre de la Palma title so as to throw doubt on its interpretation.

The Chamber went on to examine the *effectivités* claimed by each Party to ascertain whether they supported the conclusion based on the latter title. The Chamber concluded that there was no reason to alter its findings as to the position of the boundary in that region.

The Chamber next turned to the claim by El Salvador to a triangular strip along and outside the north-west boundary of the Dulce Nombre de la Palma title, which El Salvador claimed to be totally occupied by Salvadorans and administered by Salvadoran authorities. No evidence to that effect had however been laid before the Chamber. Nor did it consider that a passage in the Reply of Honduras regarded by El Salvador as an admission of the existence of Salvadoran *effectivités* in this area could be so read. There being no other evidence to support El Salvador's claim to the strip in question, the Chamber held that it appertained to Honduras, having formed part of the "mountain of Cayaguanca" attributed to the community of Ocotepeque in 1742.

The Chamber turned finally to the part of the boundary between the Peña de Cayaguanca and the western boundary of the area covered by the Dulce Nombre de la Palma title. It found that El Salvador had not made good any claim to any area further west than the Loma de los Encinos or "Santa Rosa hillock", the most westerly point of the Dulce Nombre de la Palma title. Noting that Honduras had only asserted a claim, on the basis of the rights of Ocotepeque, to the "mountain of Cayaguanca", so far south as a straight line joining the Peña de Cayaguanca to the beginning of the next agreed sector, the Chamber considered

that neither the principle *ne ultra petita*, nor any suggested acquiescence by Honduras in the boundary asserted by it, debarred the Chamber from enquiring whether the "mountain of Cayaguanca" might have extended further south, so as to be co-terminous with the eastern boundary of the Jupula title. In view of the reference in the latter to Cayaguanca as lying east of the most easterly landmark of Jupula, the Chamber considered that the area between the Jupula and the La Palma lands belonged to Honduras, and that, in the absence of any other criteria for determining the southward extent of that area, the boundary between the Peña de Cayaguanca and the Loma de los Encinos should be a straight line.

The Chamber's conclusion regarding the course of the frontier in the second disputed sector was as follows:[351]

> "From . . . the Peña de Cayaguanca, the frontier runs in a straight line somewhat south of east to the Loma de los Encinos . . . , and from there in a straight line on a bearing of N 48° E, to the hill shown on the map produced by El Salvador as El Burro (and on the Honduran maps and the United States Defense Mapping Agency maps as Piedra Rajada) . . . The frontier then takes the shortest course to the head of the *quebrada* del Copantillo, and follows the *quebrada* del Copantillo downstream to its confluence with the river Sumpul . . . , and follows the river Sumpul in turn downstream until its confluence with the *quebrada* Chiquita or Oscura . . ."

VI. *Third sector of the land boundary* (paras. 128-185)

The third sector of the land boundary in dispute lay between the boundary marker of the Pacacio, on the river of that name, and the boundary marker Poza del Cajón, on the river known as El Amatillo or Gualcuquín (see sketch-map C annexed).

In terms of the grounds asserted for the claims of the Parties the Chamber divided the disputed area into three parts.

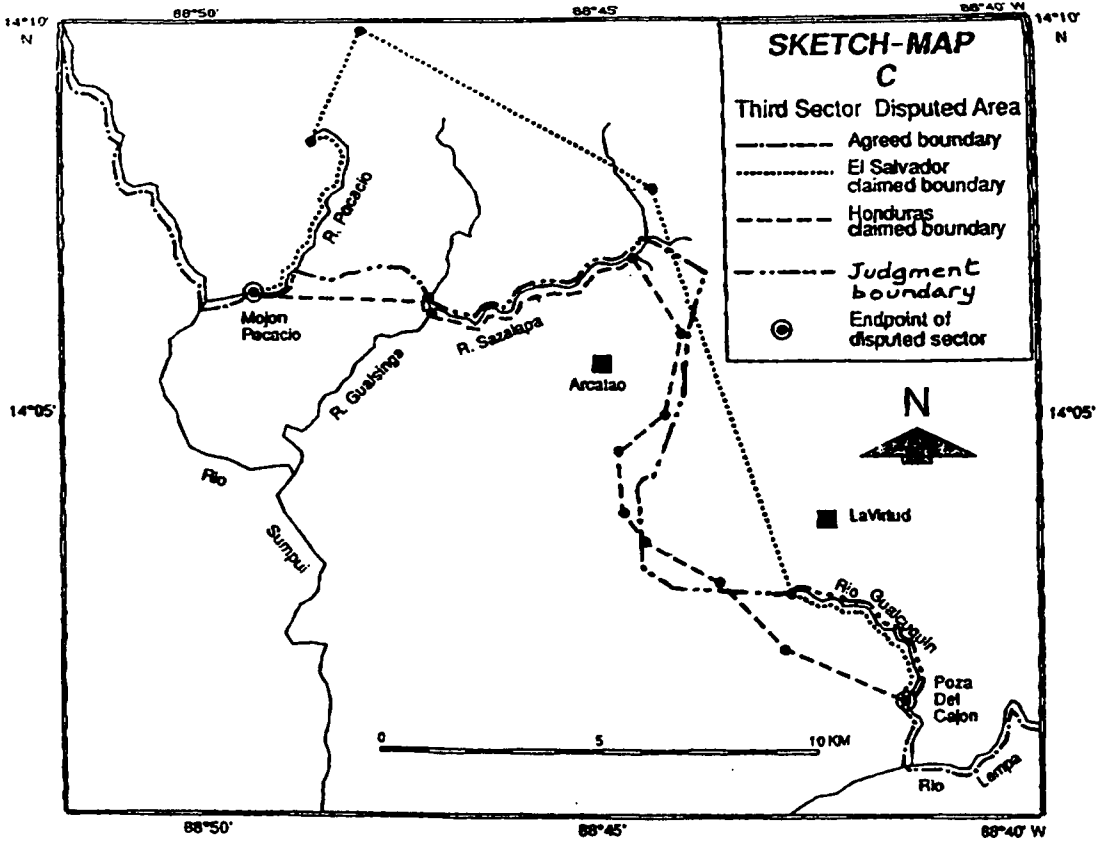
In the first part, the north-western area, Honduras invoked the *uti possidetis juris* of 1821 on the basis of land titles granted between 1719 and 1779. El Salvador on the contrary claimed the major part of the area on the basis of post-independence *effectivités* or arguments of a human nature. It did however claim a portion of the area as part of the lands of the 1724 title of Arcatao.

In the second part, the essential question was the validity, extent and relationship to each other of the Arcatao title relied on by El Salvador and 18th century titles invoked by Honduras.

In the third part, the south-east section, there was a similar conflict between the Arcatao title and a lost title, that of Nombre de Jesús in the province of San Salvador, on the one hand, and the Honduran titles of San Juan de Arcatao, supplemented by the Honduran republican titles of La Virtud and San Sebastián del Palo Verde. El Salvador claimed a further area, outside the asserted limits of the Arcatao and Nombre de Jesús titles, on the basis of *effectivités* and human arguments.

The Chamber first surveyed the *uti possidetis juris* position on the basis of the various titles produced.

With regard to the first part of the third sector, the Chamber upheld Honduras's contention in principle that the position of the pre-independence provincial boundary was defined by two eighteenth century Honduran titles. After first reserving the question of precisely where their southern limits lay, since if


SKETCH-MAP C
Third Sector Disputed Area
Agreed boundary
El Salvador claimed boundary
Honduras claimed boundary
Judgment boundary
Endpoint of disputed sector
14°10' N
88°50'
88°45'
88°40' W
14°05'
Mojon Pacacio
R. Pacacio
R. Sazalapa
R. Guabinga
Arcalao
Rio Sumpul
La Virtud
Rio Guajiquiln
Poza Del Cajon
0
5
10 KM
Rio Lempa
N

the Chamber had found in favour of El Salvador's claim based on *effectivités* it would not have had to be considered, the Chamber ultimately determined the boundary in that area on the basis of those titles.

As for the second part of the third sector, the Chamber considered it impossible to reconcile all the landmarks, distances and directions given in the various eighteenth century surveys: the most that could be achieved was a line which harmonized with such features as were identifiable with a high degree of probability, corresponded more or less to the recorded distances and did not leave any major discrepancy unexplained. The Chamber considered that three features were identifiable and that those three reference points made it possible to reconstruct the boundary between the Province of Gracias a Dios and that of San Salvador in the area under consideration and thus the *uti possidetis juris* line, which the Chamber described.

With regard to the third part of the sector, the Chamber considered that on the basis of the reconstructed 1742 title of Nombre de Jesús and the 1766 and 1786 surveys of San Juan de Arcatao, it was established that the *uti possidetis juris* line corresponded to the boundary between those two properties, which line the Chamber described. In order to define the line more precisely the Chamber considered it legitimate to have regard to the republican titles granted by Honduras in the region, the line found by the Chamber being consistent with what it regarded as the correct geographical location of those titles.

Having completed its survey of the *uti possidetis juris* position, the Chamber examined the claims made in the whole of the third sector on the basis of *effectivités*. Regarding the claims made by El Salvador on such grounds, the Chamber was unable to regard the relevant material as sufficient to affect its conclusion as to the position of the boundary. The Chamber reached the same conclusion as regards the evidence of *effectivités* submitted by Honduras.

The Chamber's conclusion regarding the course of the boundary in the third sector was as follows:[352]

> "From the Pacacio boundary marker . . . along the Río Pacacio upstream to a point . . . west of the Cerro Tecolate or Los Tecolates; from there up the *quebrada* to the crest of the Cerro Tecolato or Los Tecolates . . . , and along the watershed on this hill as far as a ridge approximately 1 kilometre to the north-east . . . ; from there in an easterly direction to the neighbouring hill above the source of the Torrente La Puerta . . . and down that stream to where it meets the river Gualsinga . . . ; from there the boundary runs along the middle of the river Gualsinga downstream to its confluence with the Sazalapa . . . , and thence upstream along the middle of the river Sazalapa to the confluence with the river Sazalapa of the *quebrada* Llano Negro . . . ; from there south-eastwards to the hill indicated . . . , and thence to the crest of the hill marked on maps as being an elevation of 1,017 metres . . . ; from there the boundary, inclining still more to the south, runs through the triangulation point known as La Cañada . . . to the ridge joining the hills indicated on the El Salvador map as Cerro El Caracol and Cerro El Sapo . . . , and from there to the feature marked on the maps as the Portillo El Chupa Miel . . . ; from there following the ridge to the Cerro El Cajete . . . , and thence to the point where the present-day road from Arcatao to Nombre de Jesús passes between the Cerro El Ocotillo and the Cerro Lagunetas . . . ; from there south-eastwards, to the top of the hill . . .

marked on the maps with a spot height of 848 metres; from there slightly south of east to a small *quebrada*; eastwards down the bed of the *quebrada* to its junction with the river Amatillo or Gualcuquín . . . ; the boundary then follows the middle of the Gualcuquín river downstream to the Poza del Cajón . . . , the point where the next agreed sector of boundary begins."

VII. *Fourth sector of the land boundary* (paras. 186-267)

The fourth and longest disputed sector of the land boundary, also involving the largest area in dispute, lay between the source of the Orilla stream and the Malpaso de Similatón boundary marker.[353]

The principal issue in that sector, at least as regards the size of the area concerned, was whether the boundary followed the river Negro-Quiagara, as Honduras contended, or a line contended for by El Salvador, some 8 kilometres to the north. In terms of the *uti possidetis juris* principle, the issue was whether or not the Province of San Miguel, which on independence had become part of El Salvador, extended to the north of that river or whether on the contrary the latter was in 1821 the boundary between that province and the Province of Comayagua, which became part of Honduras. El Salvador relied on a title issued in 1745 to the communities of Arambala and Perquín in the Province of San Miguel; the lands so granted extended north and south of the river Negro-Quiagara, but Honduras contended that, north of that river, the lands were in the Province of Comayagua.

The Chamber first set out the relevant events, in particular a dispute between the Indian community of Arambala and Perquín, in the Province of San Miguel, and an Indian community established in Jocora or Jocoara in the Province of Comayagua. The position of the boundary between the Province of San Miguel and that of Comayagua had been one of the main issues in the dispute between the two communities, which had given rise to a judicial decision of 1773. In 1815, a decision had been issued by the Real Audiencia of Guatemala confirming the rights of the Indians of Arambala-Perquín. The Parties had made extensive reference to those decisions in support of their contentions as to the location of the boundary; the Chamber was however reluctant to base a conclusion, one way or the other, on the 1773 decision and did not regard the 1815 one as wholly conclusive in respect of the location of the provincial boundary.

The Chamber then considered a contention by Honduras that El Salvador had in 1861 admitted that the Arambala-Perquín *ejidos* extended across the provincial boundary. It referred to a note of 14 May 1861 in which the Minister for Foreign Relations of El Salvador had suggested negotiations to settle a long-standing dispute between the inhabitants of the villages of Arambala and Perquín, on the one hand, and the village of Jocoara, on the other, and to the report of surveyors appointed to resolve the inter-village dispute. It considered that note to be significant not only as, in effect, a recognition that the lands of the Arambala-Perquín community had, prior to independence, straddled the provincial boundary, but also as recognition that, as a result, they straddled the international frontier.

The Chamber then turned to the south-western part of the disputed boundary, referred to as the sub-sector of Colomoncagua. The problem here was, in broad terms, the determination of the extent of the lands of Colomoncagua, Province of Comayagua (Honduras), to the west, and those of the communities of Arambala-Perquín and Torola, Province of San Miguel (El Salvador), to the east

SKETCH-MAP
D
Fourth Sector- Disputed Area
Agreed boundary
El Salvador claimed boundary
Honduras claimed boundary
Boundary in Judgment
Endpoint of disputed sector
Río Negro - Quiscamo
San Fernando
Tenela
Río Las Cañas
Río Antonio
Río San
N

and south-east. Both Parties relied on titles and other documents of the colonial period; El Salvador had also submitted a remeasurement and renewed title of 1844. The Chamber noted that, apart from the difficulties of identifying landmarks and reconciling the various surveys, the matter was complicated by doubts each Party cast on the regularity or relevance of titles invoked by the other.

After listing chronologically the titles and documents claimed by the one side or the other to be relevant, the Chamber assessed five of these documents to which the Parties had taken objection on various grounds.

The Chamber went on to determine, on the basis of an examination of the titles and an assessment of the arguments advanced by the Parties by reference to them, the line of the *uti possidetis juris* in the sub-sector under consideration. Having established that the inter-provincial boundary was, in one area, the river Las Cañas, the Chamber relied on a presumption that such a boundary was likely to follow the river so long as its course was in the same general direction.

The Chamber then turned to the final section of the boundary between the river Las Cañas and the source of the Orilla stream (end-point of the sector). With respect to that section, the Chamber accepted the line claimed by Honduras on the basis of a title of 1653.

The Chamber next addressed the claim of El Salvador, based upon the *uti possidetis juris* in relation to the concept of *tierras realengas* (crown land), to areas to the west and south-west of the land comprised in the *ejidos* of Arambala Perquín, lying on each side of the river Negro-Quiagara, bounded on the west by the river Negro-Pichigual. The Chamber found in favour of part of El Salvador's claim, south of the river Negro-Pichigual, but was unable to accept the remainder.

The Chamber had finally to deal with the eastern part of the boundary line, that between the river Negro-Quiagara and Malpaso de Similatón. An initial problem was that the Parties did not agree on the position of the Malpaso de Similatón, although this point defined one of the agreed sectors of the boundary as recorded in article 16 of the 1980 Peace Treaty, the two locations contended for being 2,500 metres apart. The Chamber therefore concluded that there was a dispute between the Parties on that point, which it had to resolve.

The Chamber noted that that dispute was part of a disagreement as to the course of the boundary beyond the Malpaso de Similatón, in the sector which was deemed to have been agreed. While it did not consider that it had jurisdiction to settle disputed questions in an "agreed" sector, neither did it consider that the existence of such a disagreement affected its jurisdiction to determine the boundary up to and including the Malpaso de Similatón.

Noting that neither side had offered any evidence whatever as to the line of the *uti possidetis juris* in this region, the Chamber, being satisfied that this line was impossible to determine in that area, considered it right to fall back on equity *infra legem*, in conjunction with an unratified delimitation of 1869. The Chamber considered that it could in that case resort to the line then proposed in negotiations, as a reasonable and fair solution in all the circumstances, particularly since there was nothing in the records of the negotiations to suggest any fundamental disagreement between the Parties on that line.

The Chamber then considered the question of the *effectivités* El Salvador claimed in the area north of the river Negro-Quiagara, which the Chamber had found to fall on the Honduran side of the line of the *uti possidetis juris*, as well

as the areas outside those lands. After reviewing the evidence presented by El Salvador, the Chamber found that, to the extent that it could relate various place-names to the disputed areas and to the *uti possidetis juris* boundary, it could not regard that material as sufficient evidence of any kind of *effectivités* which could be taken into account in determining the boundary.

Turning to the *effectivités* claimed by Honduras, the Chamber did not see here sufficient evidence of Honduran *effectivités* in an area clearly shown to be on the El Salvador side of the boundary line to justify doubting that that boundary represented the *uti possidetis juris* line.

The Chamber's conclusion regarding the course of the boundary in the fourth disputed sector was as follows:[354]

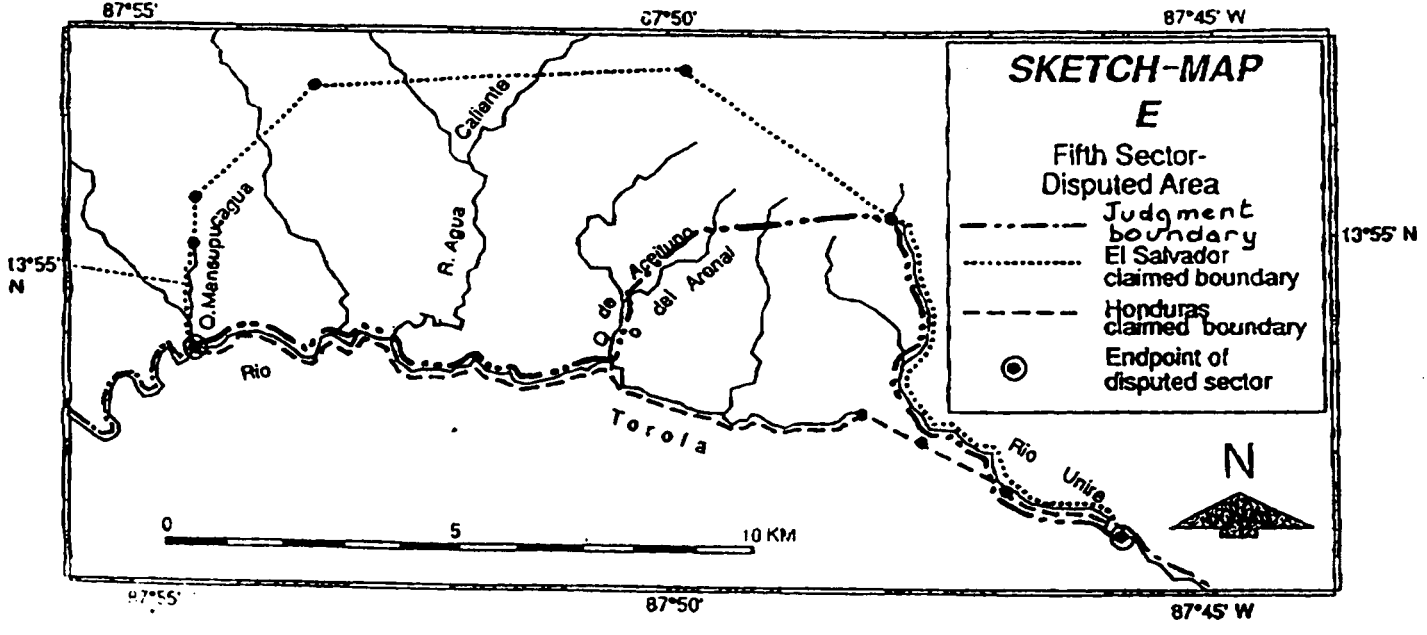
> "from the source of the Orilla stream ... the boundary runs through the pass of El Jobo to the source of the Cueva Hedionda stream ..., and thence down the middle of that stream to its confluence with the river Las Cañas ..., and thence following the middle of the river upstream as far as a point ... near the settlement of Las Piletas; from there eastwards over a col ... to a hill ..., and then north-eastwards to a point on the river Negro or Pichigual ...; downstream along the middle of the river Negro or Pichigual to its confluence with the river Negro-Quiaguara ..., then upstream along the middle of the river Negro-Quiaguara as far as the Las Pilas boundary marker ..., and from there in a straight line to the Malpaso de Similatón as identified by Honduras".

VIII. *Fifth sector of the land boundary* (paras. 268-305)

The fifth disputed sector extended from "the point on [the] north bank [of the river Torola] where it is joined by the Manzupucagua stream" to the Paso de Unire in the Unire river (see sketch-map E annexed).

El Salvador's claim was based essentially on the *título ejidal* granted to the village of Polorós, Province of San Miguel, in 1760, following a survey; the boundary line El Salvador claimed was what it considered to be the northern boundary of the lands comprised in that title, save for a narrow strip on the western side, claimed on the basis of "human arguments".

Honduras, while disputing El Salvador's geographic interpretation of the Polorós title, conceded that it extended across part of the river Torola, but nevertheless claimed that the present-day frontier should follow that river. It contended that the northern part of the *ejidos* granted to Polorós in 1760, including all the lands north of the river and also extending south of it, had formerly been the land of San Miguel de Sapigre, a village which had disappeared owing to an epidemic some time after 1734, and that the village had been in the jurisdiction of Comayagua, so that those lands, although granted to Polorós, remained within that juisdiction. It followed, according to Honduras, that the *uti possidetis juris* line ran along the boundary between those lands and the other Polorós lands; but Honduras conceded that as a result of events in 1854 it acquiesced in a boundary further north, formed by the Torola. Alternatively Honduras claimed the Polorós lands north of the river on the basis that El Salvador had acquiesced, in the nineteenth century, in the Torola as frontier. The western part of the disputed area, which Honduras considered to fall outside the Polorós title, was claimed by it as part of the lands of Cacaoterique, a village in the jurisdiction of Comayagua.


87°55'
87°50'
87°45' W
13°55' N
SKETCH-MAP
E
Fifth Sector-
Disputed Area
Judgment boundary
El Salvador claimed boundary
Honduras claimed boundary
Endpoint of disputed sector
Caliente
R. Agua
Q. Manapuxcagua
Q. de Agallua del Arenal
Rio
Torola
Rio Unire
N
0
5
10 KM

Noting that the title of Polorós had been granted by the authorities of the province of San Miguel, the Chamber considered that it must be presumed that the lands comprised in the survey had all been within the jurisdiction of San Miguel, a presumption which, the Chamber noted, was supported by the text.

After examining the available material as to the existence, location and extent of the village of San Miguel de Sapigre, the Chamber concluded that the claim of Honduras to that extinct village was not supported by sufficient evidence; it did not therefore have to go into the question of the effect of the inclusion in an *ejido* of one jurisdiction of *tierras realengas* of another. It concluded that the *ejido* granted in 1760 to the village of Polorós, in the Province of San Miguel, had been wholly situated in that province and that accordingly the provincial boundary lay beyond the northern limit of that *ejido* or coincided with it. There being equally no evidence of any change in the situation between 1760 and 1821, the *uti possidetis juris* line might be taken to have been in the same position.

The Chamber then examined the claim of Honduras that, whatever the 1821 position, El Salvador had, by its conduct between 1821 and 1897, acquiesced in the river Torola as boundary. The conduct in question had been the granting by the Government of El Salvador, in 1842, of a title to an estate that both Parties claimed was carved out of the *ejidos* of Polorós and El Salvador's reaction, or lack of reaction, to the granting of two titles over lands north of the river Torola by Honduras in 1856 and 1879. From an examination of those events, the Chamber did not find it posible to uphold Honduras's claim that El Salvador had acquiesced in the river Torola as the boundary in the relevant area.

The Chamber went on to interpret the extent of the Polorós *ejido* as surveyed in 1760, on the face of the text and in the light of developments after 1821. Following a lengthy and detailed analysis of the Polorós title, the Chamber concluded that neither of the interpretations of it by the Parties could be reconciled with the relevant landmarks and distances; the inconsistency crystallized during the negotiations that led up to the unratified Cruz-Letona Convention in 1884. In the light of certain republican titles, the Chamber arrived at an interpretation of the Polorós title which, if not perfectly in harmony with all the relevant data, produced a better fit than either of the Parties' interpretations. As to neighbouring titles, the Chamber took the view that, on the material available, no totally consistent mapping of the Polorós title and the survey of Cacaoterique could be achieved.

In the eastern part of the sector, the Chamber noted that the Parties agreed that the river Unire constituted the boundary of their territories for some distance upstream of the "Paso de Unire", but disagreed as to which of two tributaries was to be regarded as the headwaters of the Unire. Honduras claimed that between the Unire and the headwaters of the Torola the boundary was a straight line corresponding to the south-western limit of the lands comprised in the 1738 Honduran title of San Antonio de Padua. After analysing the Polorós title and 1682 and 1738 surveys of San Antonio, the Chamber found that it was not convinced by the Honduran argument that the San Antonio lands had extended westwards across the river Unire and held that it was the river which was the *uti possidetis juris* line, as claimed by El Salvador.

To the west of the Polorós lands, since El Salvador's claim to land north of the river was based solely on the Polorós title (save for the strip on the west

claimed on the basis of "human arguments"), the river Torola formed the boundary between the Polorós lands and the starting point of the sector. With regard to the strip of land claimed by El Salvador on the west, the Chamber considered that, for lack of evidence, that claim could not be sustained.

Turning finally to the evidence of *effectivités* submitted by Honduras with respect to all six sectors, the Chamber concluded that this was insufficient to justify re-examining its conclusion as to the boundary line.

The Chamber's conclusion regarding the course of the boundary in the fifth disputed sector was as follows:[355]

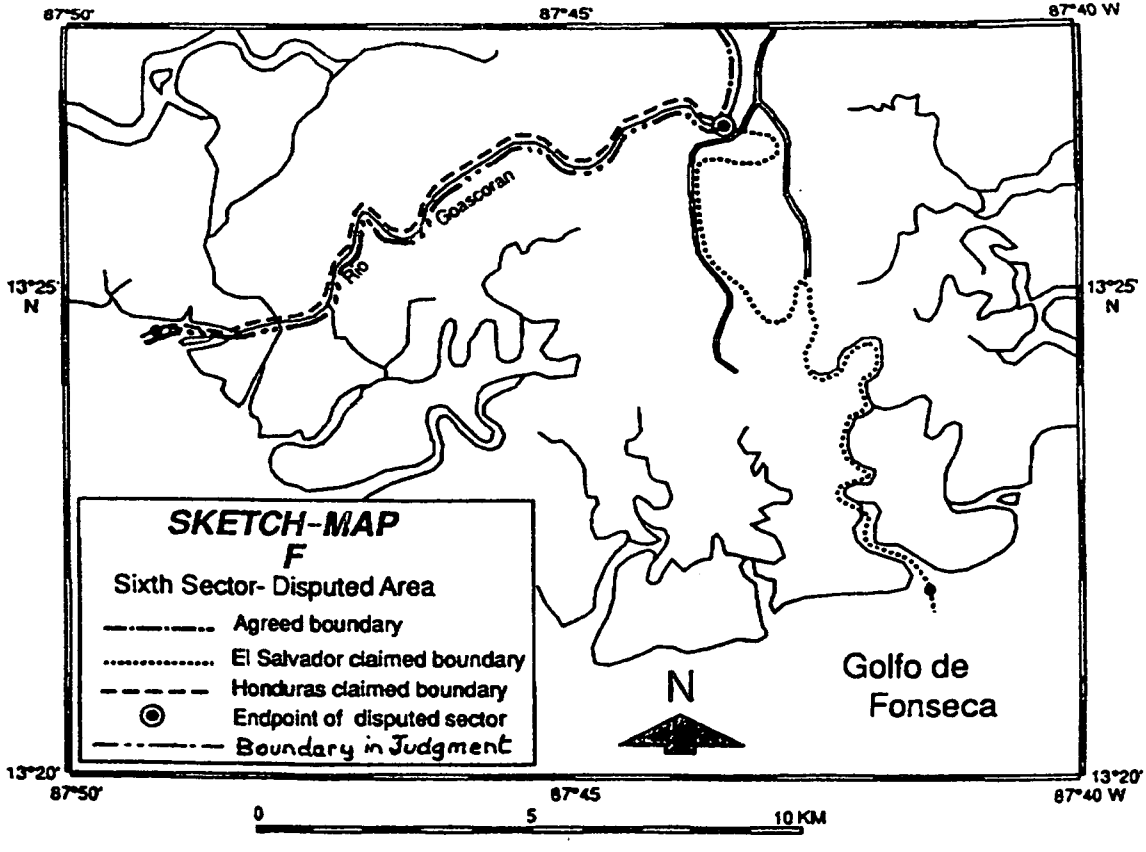
> "From the confluence with the river Torola of the stream identified in the General Treaty of Peace as the *quebrada* de Mansupucagua ... the boundary runs upstream along the middle of the river Torola as far as its confluence with a stream known as the *quebrada* del Arenal or *quebrada* de Accituno ...; thence up the middle of the course of that stream as far as [a] point, at or near its source, ..., and thence in a straight line somewhat north of east to a hill some 1,100 metres high ...; thence in a straight line to a hill near the river Unire ..., and thence to the nearest point on the river Unire; downstream along that river to the point known as the Paso de Unire ..."

IX. *Sixth sector of the land boundary* (paras. 306-322)

The sixth and final disputed sector of the land boundary was that between a point on the river Goascorán known as Los Amates, and the waters of the Gulf of Fonseca (see sketch-map F annexed). Honduras contended that in 1821 the river Goascorán had constituted the boundary between the colonial units to which the two States had succeeded, that there had been no material change in the course of the river since 1821, and that the boundary therefore followed the present stream flowing into the Gulf north-west of the Islas Ramaditas in the Bay of La Unión. El Salvador however claimed that it was a previous course followed by the river which defined the boundary and that that course could be traced and reached the Gulf at Estero La Cutú.

The Chamber began by examining an argument El Salvador based on history. The Parties agreed that during the colonial period a river called the Goascorán had constituted the boundary between the Province of San Miguel and the Alcaldia Mayor de Minas of Tegucigalpa, and that El Salvador had succeeded on independence to the territory of the province; but El Salvador denied that Honduras had acquired any rights over the former territory of the Alcaldía Mayor of Tegucigalpa, which according to El Salvador had not in 1821 belonged to the Province of Honduras but had been an independent entity. The Chamber however observed that on the basis of the *uti possidetis juris*, El Salvador and Honduras had succeeded to all the relevant colonial territories, leaving no *terra nullius*, and that the former Alcaldía Mayor had at no time after 1821 been an independent state additional to them. Its territory had had to pass either to El Salvador or to Honduras and the Chamber understood it to have passed to Honduras.

The Chamber observed that El Salvador's argument of law, on the basis that the former bed of the river Goascorán formed the *uti possidetis juris* boundary, was that where a boundary was formed by the course of a river and the stream suddenly formed a new bed, that process of "avulsion" did not bring


87°50'
87°45'
87°40 W
13°25' N
13°20'
Río Goascoran
SKETCH-MAP
F
Sixth Sector- Disputed Area
Agreed boundary
El Salvador claimed boundary
Honduras claimed boundary
Endpoint of disputed sector
Boundary in Judgment
N
Golfo de Fonseca
0
5
10 KM

about a change in the boundary, which continued along the old channel. No record of an abrupt change of course having occurred had been brought to the Chamber's attention, but had the Chamber been satisfied that the course had earlier been so radically different from its present one, then an avulsion might reasonably have been inferred. The Chamber noted that there was no scientific evidence that the previous course had been such that the river had debouched in the Estero La Cutú rather than in any of the other neighbouring inlets in the coastline.

El Salvador's case appeared to be that if the change in the river's course had occurred after 1821, the river had been the boundary which under the *uti possidetis juris* had become the international frontier, and would have been maintained as it was by virtue of a rule of international law; if the course had changed before 1821 and no further change had taken place after 1821, El Salvador's claim to the "old" course as the modern boundary would have been based on a rule concerning avulsion which would have been one not of international law but of Spanish colonial law. El Salvador had not committed itself to an opinion on the position of the river in 1821, but did contend that a rule on avulsion supporting its claim had been part of Spanish colonial law.

In the Chamber's view, however, any claim by El Salvador that the boundary followed an old course of the river abandoned at some time *before* 1821 had to be rejected. It was a claim that was first made in 1972 and was inconsistent with the previous history of the dispute.

The Chamber then turned to the evidence concerning the course of the Goascorán in 1821. El Salvador relied on certain titles to private lands, beginning with a 1695 survey. Honduras produced land titles dating from the seventeenth and nineteenth centuries as well as a map or chart of the Gulf of Fonseca prepared by an expedition in 1794-1796, and a map of 1804.

The Chamber considered that the report of the expedition that led to the preparation of the 1796 map, and the map itself, left little room for doubt that in 1821 the Goascorán had already been flowing in its present-day course. It emphasized that the 1796 map was not one which purported to indicate frontiers or political divisions, but the visual representation of what had been recorded in the contemporary report. The Chamber saw no difficulty in basing a conclusion on the expedition report combined with the map.

The Chamber added that similar weight might be attached to the conduct of the Parties in negotiations in 1880 and 1884. In 1884 it had been agreed that the Goascorán river was to be regarded as the boundary between the two Republics, "from its mouth in the Gulf of Fonseca . . . upstream as far as the confluence with the Guajiniquil or Pescado river . . .", and the 1880 record referred to the boundary following the river from its mouth "upstream in a northeasterly direction", i.e., the direction taken by the present course, not the hypothetical old course of the river. The Chamber also observed that an interpretation of those texts as referring to the old course of the river was untenable in view of the cartographic material of the period, presumably available to the delegates, which pointed overwhelmingly to the river being then in its present course and forming the international boundary.

Referring to a suggestion by El Salvador that the river Goascorán would have returned to its old course had it not been prevented from so doing by a

wall or dike built by Honduras in 1916, the Chamber did not consider that this allegation, even if proved, would have affected its decision.

At its mouth in the Bay of La Unión the river divided into several branches, separated by islands and islets. Honduras had indicated that its claimed boundary passed to the north-west of those islands, thus leaving them all in Honduran territory. El Salvador, contending as it did that the boundary did not follow the present course of the Goascorán at all, had not expressed a view on whether a line following that course should pass north-west or south-east of the islands or between them. The area at stake was very small and the islets involved did not seem to have been inhabited or habitable. The Chamber considered, however, that it would not have completed its task of delimiting the sixth sector were it to have left unsettled the question of the choice of one of the present mouths of the Goascorán as the situation of the boundary line. It noted at the same time that the material on which to found a decision was scanty. After describing the position taken by Honduras since negotiations held in 1972, as well as its position during the work of the Joint Frontier Commission and in its submissions, the Chamber considered that it might uphold the relevant Honduran submissions in the terms in which they were presented.

The Chamber's conclusion regarding the sixth disputed sector was as follows :[356]

> "From the point known as Los Amates . . . the boundary follows the middle of the bed of the river Goascorán to the point where it emerges in the waters of the Bahía La Unión, Gulf of Fonseca, passing to the north-west of the Islas Ramaditas."

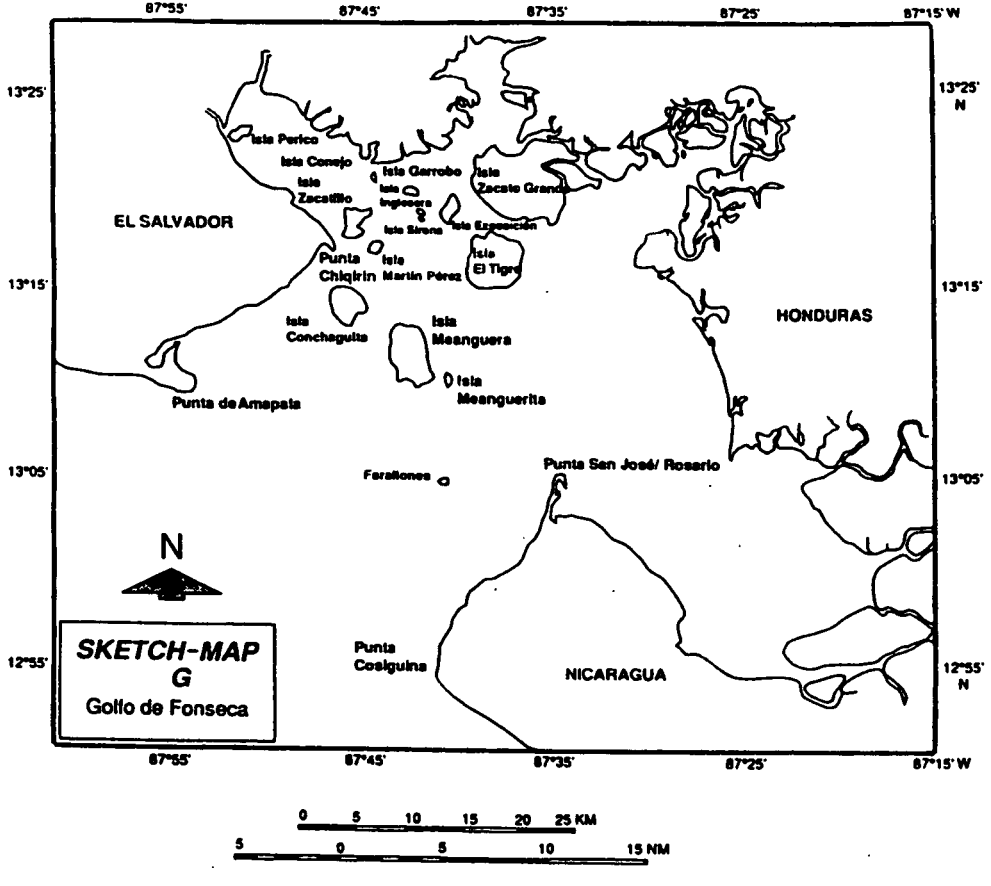
X. *Legal situation of the islands* (paras. 323-368)

The major islands in the Gulf were indicated on sketch-map G annexed. El Salvador asked the Chamber to declare that it had sovereignty over all the islands within the Gulf except Zacate Grande and the Farallones; Honduras asked it to declare that only Meanguera and Meanguerita islands were in dispute between the Parties and that Honduras had sovereignty over them.

In the view of the Chamber the provision of the Special Agreement that it determine "*la situación jurídica insular*" conferred upon it jurisdiction in respect of all the islands of the Gulf. A judicial determination, however, was only required in respect of such islands as were in dispute between the Parties; this excluded, *inter alia*, the Farallones, which were recognized by both Parties as belonging to Nicaragua.

The Chamber considered that prima facie the existence of a dispute over an island can be deduced from the fact of its being the subject of specific and argued claims. Noting that El Salvador had pressed its claim to El Tigre island with arguments in support and that Honduras had advanced counter-arguments, though with the object of showing that there was no dispute over El Tigre, the Chamber considered that, either since 1985 or at least since issue had been joined in the current proceedings, the islands in dispute were El Tigre, Meanguera and Meanguerita.

Honduras contended however that, since the 1980 General Treaty of Peace used the same terms as article 2, paragraph 2, of the Special Agreement, the jurisdiction of the Chamber had to be limited to the islands in dispute at the time the Treaty was concluded, i.e., Meanguera and Meanguerita, the Salvadoran


87°55'
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12°55' N
Isla Perico
Isla Conejo
Isla Zacatillo
Isla Garrobo
Isla Ingeniero
Isla Sirena
Isla Zacate Grande
Isla Exposición
Isla El Tigre
EL SALVADOR
Punta Chiquirin
Isla Martín Pérez
Isla Conchaguita
Isla Meanguera
Isla Meanguerita
HONDURAS
Punta de Amapala
Farallones
Punta San José/ Rosario
N
SKETCH-MAP G
Golfo de Fonseca
Punta Cosiguina
NICARAGUA
0 5 10 15 20 25 KM
5 0 5 10 15 NM

claim to El Tigre having been made only in 1985. The Chamber however observed that the question whether a given island was in dispute was relevant, not to the question of the existence of jurisdiction, but to that of its exercise. Honduras also claimed that there was no real dispute over El Tigre, which had since 1854 been recognized by El Salvador as belonging to Honduras, but that El Salvador had made a belated claim to it as a political or tactical move. The Chamber noted that for it to find that there was no dispute would require it first to determine that El Salvador's claim was wholly unfounded, and to do so could hardly be viewed as anything but the determination of a dispute. The Chamber therefore concluded that it ought to determine whether Honduras or El Salvador had jurisdiction over each of the islands of El Tigre, Meanguera and Meanguerita.

Honduras contended that by virtue of article 26 of the General Treaty of Peace the law applicable to the dispute was solely the *uti possidetis juris* of 1821, while El Salvador maintained that the Chamber had to apply the modern law on acquisition of territory and look at the effective exercise or display of State sovereignty over the islands as well as historical titles.

The Chamber had no doubt that the determination of sovereignty over the islands had to start with the *uti possidetis juris*. In 1821, none of the islands of the Gulf, which had been under the sovereignty of the Spanish Crown, were *terra nullius*. Sovereignty over them could therefore not be acquired by occupation and the matter was thus one of the succession of the newly independent States to the islands. The Chamber would therefore consider whether the appurtenance in 1821 of each disputed island to one or the other of the various administrative units of the Spanish colonial structure could be established, regard being had not only to legislative and administrative texts of the colonial period but also to "colonial *effectivités*". The Chamber observed that in the case of the islands the legal and administrative texts were confused and conflicting, and that it was possible that Spanish colonial law had given no clear and definite answer as to the appurtenance of some areas. It therefore considered it particularly appropriate to examine the conduct of the new States during the period immediately after 1821. Claims then made, and the reaction—or lack of reaction—to them might throw light on the contemporary appreciation of what the situation in 1821 had been, or should be taken to have been.

The Chamber noted that El Salvador claimed all the islands in the Gulf (except Zacate Grande) on the basis that during the colonial period they had been within the jurisdiction of the township of San Miguel in the colonial province of San Salvador, which in turn had been within the jurisdiction of the Real Audiencia of Guatemala. Honduras asserted that the islands formed part of the bishopric and province of Honduras, that the Spanish Crown had attributed Meanguera and Meanguerita to that province and that ecclesiastical jurisdiction over the islands appertained to the parish of Choluteca and the Guardanía of Nacaome, assigned to the bishopric of Comayagua. Honduras had also presented an array of incidents and events by way of colonial *effectivités*.

The fact that the ecclesiastical jurisdiction had been relied on as evidence of "colonial *effectivités*" presented difficulties, as the presence of the church on the islands, which were sparsely populated, had not been permanent.

The Chamber's task was made more difficult by the fact that many of the historical events relied on could be, and had been, interpreted in different ways and thus used to support the arguments of either Party.

The Chamber considered it unnecessary to analyse in further detail the arguments advanced by each Party to show that it had acquired sovereignty over some or all of the islands by the application of the *uti possidetis juris* principle, the material available being too fragmentary and ambiguous to admit of any firm conclusion. The Chamber had therefore to consider the post-independence conduct of the Parties, as indicative of what had to have been the 1821 position. This might be supplemented by considerations independent of the *uti possidetis juris* principle, in particular the possible significance of the conduct of the Parties as constituting acquiescence. The Chamber also noted that under article 26 of the General Treaty of Peace, it might consider all "other evidence and arguments of a legal, historical, human or other kind, brought before it by the Parties and admitted under international law".

The law of acquisition of territory, invoked by El Salvador, was in principle clearly established and buttressed by arbitral and judicial decisions. The difficulty with its application in the instant case was that it had been developed primarily to deal with the acquisition of sovereignty over *terra nullius*. Both Parties however asserted a title of succession from the Spanish Crown, so that the question arose whether the exercise or display of sovereignty by the one Party, particularly when coupled with lack of protest by the other, could indicate the presence of an *uti possidetis juris* title in the former Party, where the evidence based on titles or colonial *effectivités* was ambiguous. The Chamber noted that in the *Minquiers and Ecrehos* case in 1953 the Court had not simply disregarded the ancient titles and decided on the basis of more recent displays of sovereignty.

In the view of the Chamber, where the relevant administrative boundary in the colonial period had been ill-defined or its position disputed, the behaviour of the two States in the years following independence might serve as a guide to where the boundary was, either in their shared view, or in the view acted on by one and acquiesced in by the other.

Being uninhabited or sparsely inhabited, the islands had not aroused any interest or dispute until the years nearing the mid-19th century. What then occurred appears to be highly material. The islands were not *terra nullius* and in legal theory each island already appertained to one of the Gulf States as heir to the appropriate part of the Spanish colonial possession, which precluded acquisition by occupation; but effective possession by one of the States of an island could constitute a post-colonial *effectivité*, throwing light on the contemporary appreciation of the legal situation. Possession backed by the exercise of sovereignty might confirm the *uti possidetis juris* title. The Chamber did not find it necessary to decide whether such possession could be recognized even in contradiction of such a title, but in the case of the islands, where the historical material of colonial times was confused and contradictory and independence was not immediately followed by unambiguous acts of sovereignty, this was practically the only way in which the *uti possidetis juris* could find formal expression.

The Chamber dealt first with El Tigre, and reviewed the historical events concerning it from 1833 onward. Noting that Honduras had remained in effective occupation of the island since 1849, the Chamber concluded that the conduct of the Parties in the years following the dissolution of the Federal Republic of Central America was consistent with the assumption that El Tigre appertained to Honduras. Given the attachment of the Central American States

to the principle of *uti possidetis juris*, the Chamber considered that that contemporary assumption also implied belief that Honduras was entitled to the island by succession from Spain or, at least, that such succession by Honduras was not contradicted by any known colonial title. Although Honduras had not formally requested a finding of its sovereignty over El Tigre, the Chamber considered that it should define its legal situation by holding that sovereignty over El Tigre belonged to Honduras.

Regarding Meanguera and Meanguerita, the Chamber observed that throughout the argument the two islands had been treated by both Parties as constituting a single insular unity. The smallness of Meanguerita, its contiguity to the larger island, and the fact that it was uninhabited allowed its characterization as a "dependency" of Meanguera. That Meanguerita was "capable of appropriation" was undoubted: although without fresh water, it was not a low-tide elevation and was covered by vegetation. The Parties had treated it as capable of appropriation, since they claimed sovereignty over it.

The Chamber noted that the initial formal manifestation of the dispute had occurred in 1854, when a circular letter had made widely known El Salvador's claim to the island. Furthermore, in 1856 and 1879 El Salvador's official journal had carried reports concerning administrative acts relating to it. The Chamber had seen no record of reactions or protests by Honduras over these publications.

The Chamber observed that from the late nineteenth century the presence of El Salvador on Meanguera had intensified, still without objection or protest from Honduras, and that it had received considerable documentary evidence on the administration of Meanguera by El Salvador. Throughout the period covered by that documentation there was no record of any protest by Honduras, with the exception of one recent event, described later. Furthermore, El Salvador had called a witness, a Salvadoran resident of the island, and his testimony, not challenged by Honduras, showed that El Salvador had exercised State power over Meanguera.

According to the material before the Chamber, it was only in January 1991 that the Government of Honduras had made protests to the Government of El Salvador concerning Meanguera, which had been rejected by the latter Government. The Chamber considered that the Honduran protest had been made too late to affect the presumption of acquiescence on the part of Honduras. The conduct of Honduras vis-à-vis earlier *effectivités* revealed some form of tacit consent to the situation.

The Chamber's conclusion was thus the following. In relation to the islands, the "documents which were issued by the Spanish Crown or by any other Spanish authority, whether secular or ecclesiastical", did not appear sufficient to "indicate the jurisdictions or limits of territories or settlements" in terms of article 26 of that Treaty, so that no firm conclusion could be based upon such material, taken in isolation, for deciding between the two claims to an *uti possidetis juris* title. Under the final sentence of article 26, the Chamber was however entitled to consider both the effective interpretation of the *uti possidetis juris* by the Parties, in the years following independence, as throwing light on the application of the principle, and the evidence of effective possession and control of an island by one Party without protest by the other, as pointing to acquiescence. The evidence as to possession and control, and the display and exercise

of sovereignty, by Honduras over El Tigre and by El Salvador over Meanguera (to which Meanguerita was an appendage), coupled in each case with the attitude of the other Party, clearly showed that Honduras was treated as having succeeded to Spanish sovereignty over El Tigre, and El Salvador to Spanish sovereignty over Meanguera and Meanguerita.

XI. *Legal situation of the maritime spaces* (paras. 369-420)

The Chamber first recalled that Nicaragua had been authorized to intervene in the proceedings, but solely on the question of the legal régime of the waters of the Gulf of Fonseca. Referring to complaints by the Parties that Nicaragua had dealt with matters beyond the limits of its permitted intervention, the Chamber observed that it had taken account of Nicaragua's arguments only where they appeared relevant in its consideration of the régime of the waters of the Gulf of Fonseca.

The Chamber then referred to the disagreement between the Parties on whether article 2, paragraph 2, of the Special Agreement empowered or required the Chamber to delimit a maritime boundary, within or without the Gulf. El Salvador maintained that "the Chamber has no jurisdiction to effect any delimitation of the maritime spaces", whereas Honduras sought the delimitation of the maritime boundary inside and outside the Gulf. The Chamber noted that those contentions had to be seen in relation to the position of the Parties as to the legal status of the Gulf waters: El Salvador claimed that they were subject to a condominium in favour of the three coastal States and that delimitation would therefore be inappropriate, whereas Honduras argued that within the Gulf there was a community of interests which necessitated a judicial delimitation.

In application of the normal rules of treaty interpretation,[357] the Chamber first considered what was the "ordinary meaning" of the terms of the Special Agreement. It concluded that no indication of a common intention to obtain a delimitation from the Chamber could be derived from the text as it stood. Turning to the context, the Chamber observed that the Special Agreement used the wording "to delimit the boundary line" regarding the land frontier, while confining the task of the Chamber as it related to the islands and maritime spaces to "determine [their] legal situation", the same contrast of wording having been observed in article 18, paragraph 2, of the General Treaty of Peace. Noting that Honduras itself recognized that the island dispute was not a conflict of delimitation but of attribution of sovereignty over a detached territory, the Chamber observed that it was difficult to accept that the wording "to determine the legal situation", used for both the islands and the maritime spaces, would have a completely different meaning regarding the islands and regarding maritime spaces.

Invoking the principle of effectiveness, Honduras argued that the context of the Treaty and the Special Agreement militated against the Parties having intended merely a determination of the legal situation of the spaces unaccompanied by delimitation, the object and purpose of the Special Agreement being to dispose completely of a long-standing corpus of disputes. In the Chamber's view, however, in interpreting a text of this kind, it had to have regard to the common intention as it was expressed. In effect, what Honduras was proposing was recourse to the "circumstances" of the conclusion of the Special Agreement, which constituted no more than a supplementary means of interpretation.

To explain the absence of any specific reference to delimitation in the Special Agreement, Honduras pointed to a provision in the Constitution of El Sal-

vador such that its representatives could never have intended to sign a special agreement contemplating any delimitation of the waters of the Gulf. Honduras contended that it was for that reason that the expression "determine the legal situation" had been chosen, intended as a neutral term which would not prejudice the position of either Party. The Chamber was unable to accept that contention, which amounted to a recognition that the Parties had been unable to agree that the Chamber should have jurisdiction to delimit the waters of the Gulf. It concluded that the agreement between the Parties, expressed in article 2, paragraph 2, of the Special Agreement, that the Chamber should determine the legal situation of the maritime spaces did not extend to their delimitation.

Relying on the fact that the expression "determine the legal situation of the island and the maritime spaces" was also used in article 18 of the General Treaty of Peace of 1980, defining the role of the Joint Frontier Commission, Honduras invoked the subsequent practice of the Parties in the application of the Treaty and invited the Chamber to take into account the fact that the Joint Frontier Commission had examined proposals aimed at such delimitation. The Chamber considered that, while both customary law and the Vienna Convention on the Law of Treaties[358] allowed such practice to be taken into account for purposes of interpretation, none of the considerations raised by Honduras could prevail over the absence from the text of any specific reference to delimitation.

The Chamber then turned to the legal situation of the waters of the Gulf, which fell to be determined by the application of "the rules of international law applicable between the Parties, including, where pertinent, the provisions of the General Treaty of Peace", as provided in articles 2 and 5 of the Special Agreement.

Following a description of the geographical characteristics of the Gulf, the coastline of which was divided between El Salvador, Honduras and Nicaragua,[359] and the conditions of navigation within it, the Chamber pointed out that the dimensions and proportions of the Gulf were such that it would nowadays be a juridical bay under the provisions (which might be found to express general customary law) of the Convention on the Territorial Sea and the Contiguous Zone (1958) and the United Nations Convention on the Law of the Sea (1982), the consequence being that, if it were a single-State bay, a closing line might now be drawn and the waters be thereby enclosed and "considered as internal waters". The Parties and the intervening State, as well as commentators generally, were agreed that the Gulf was an historic bay, and that its waters were accordingly historic waters. Such waters had been defined in the *Fisheries* case between the United Kingdom and Norway as "waters which are treated as internal waters but which would not have that character were it not for the existence of an historic title".[360] That ought to be read in the light of the observation in the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* case that:

> "general international law ... does not provide for a *single* 'régime' for 'historic waters' or 'historic bays', but only for a particular régime for each of the concrete, recognized cases of 'historic waters' or 'historic bays' ".[361]

The Chamber concluded that it was clearly necessary to investigate the particular history of the Gulf to discover the "regime" resulting therefrom, adding that the particular historical regime established by practice had to be especially important in a pluri-State bay, a kind of bay for which there were notoriously no agreed and codified general rules of the kind so well established for single-State bays.

From its discovery in 1522 until 1821, the Gulf had been a single-State bay the waters of which were under the single sway of the Spanish Crown. The rights in the Gulf of the present coastal States had thus been acquired, like their land territories, by succession from Spain. The Chamber had therefore to enquire into the legal situation of the waters of the Gulf in 1821; for the principle of *uti possidetis juris* ought to apply to those waters as well as to the land.

The legal status of the Gulf waters after 1821 was a question which had confronted the Central American Court of Justice in the case between El Salvador and Nicaragua concerning the Gulf in which it rendered its judgement of 9 March 1917. That judgement, which had examined the particular regime of the Gulf of Fonseca, had therefore to be taken into consideration as an important part of the Gulf's history. The case before the Central American Court had been brought by El Salvador against Nicaragua because of the latter's entry into the Bryan-Chamorro Treaty of 1914 with the United States, by which Nicaragua had granted the latter a concession for the construction of an interoceanic canal and of a naval base in the Gulf, an arrangement that would allegedly have prejudiced El Salvador's own rights in the Gulf.

On the underlying question of the status of the waters of the Gulf there had been three matters taken into account by the practice and the 1917 judgement: first, the practice of all three coastal States had established and mutually recognized a 1 marine league (3 nautical miles) littoral maritime belt off their respective mainland coasts and islands, in which belt they each exercised an exclusive jurisdiction and sovereignty, though with rights of innocent passage conceded on a mutual basis; second, all three States had recognized a further belt of 3 marine leagues (9 nautical miles) for rights of "maritime inspection" for fiscal purposes and for national security; third, there had been an Agreement of 1900 between Honduras and Nicaragua by which a partial maritime boundary between the two States had been delimited, which, however, stopped well short of the waters of the main entrance to the bay.

Furthermore the Central American Court had unanimously held that the Gulf "is an historic bay possessed of the characteristics of a closed sea" and that ". . . the parties are agreed that the Gulf is a closed sea . . ."; by "closed sea" the Court seemed to mean simply that it was not part of the high seas and its waters were not international waters. At another point the Judgement described the Gulf as "an historic or vital bay".

The Chamber then pointed out that the term "territorial waters" used in the Judgement had not then necessarily indicated what would now be called "territorial sea", and explained what may have appeared to be an inconsistency in the Judgement concerning rights of "innocent use", which were at odds with the present general understanding of the legal status of the waters of a bay as constituting "internal waters". The Chamber observed that the rules and principles normally applicable to single-State bays were not necessarily appropriate to a bay which was a pluri-State bay and also an historic one. Moreover, there was a need for shipping to have access to any of the three coastal States through the main channels between the bay and the ocean. Rights of innocent passage were not inconsistent with a regime of historic waters. There was furthermore the practical point that since those waters were outside the 3-mile maritime belt of exclusive jurisdiction in which innocent passage was nevertheless recog-

nized in practice, it would have been absurd not to have recognized passage rights in those waters, which had to be crossed in order to reach those maritime belts.

All three coastal States continued to claim that the Gulf was an historic bay with the character of a closed sea, and it seemed also to continue to be the subject of that "acquiescence on the part of other nations" to which the 1917 judgement referred; moreover that position had been generally accepted by commentators. The problem was the precise character of the sovereignty the three coastal States enjoyed in those historic waters. Recalling the former view that in a pluri-State bay, if it was not historic waters, the territorial sea followed the sinuosities of the coast and the remainder of the waters of the bay were part of the high seas, the Chamber noted that that solution was not possible in the case of the Gulf of Fonseca since it was an historic bay and therefore a "closed sea".

The Chamber then quoted the holding by the Central American Court that ". . . the legal status of the Gulf of Fonseca . . . is that of property belonging to the three countries that surround it . . ." and that ". . . the high parties are agreed that the waters which form the entrance to the Gulf intermingle . . .". In addition the Judgement had recognized that maritime belts of 1 marine league from the coast were within the exclusive jurisdiction of the coastal State and therefore ought to "be excepted from the community of interest or co-ownership". After quoting the paragraphs of the Judgement setting forth the Court's general conclusions, the Chamber observed that the essence of its decision on the legal status of the waters of the Gulf had been that those historic waters were then subject to a "co-ownership" (*condominio*) of the three coastal States.

The Chamber noted that El Salvador approved strongly of the condominium concept, and held that that status not only prevailed but also could not be changed without its consent. Honduras opposed the condominium idea and accordingly called in question the correctness of that part of the 1917 judgement, whilst also relying on the fact that it had not been a party to the case and so could not be bound by the decision. Nicaragua was, and had consistently been, opposed to the condominium solution.

Honduras also argued against the condominium on the ground that condominia could only be established by agreement. It was doubtless right in claiming that condominia, in the sense of arrangements for the common government of territory, had ordinarily been created by treaty. But what the Central American Court had had in mind was a joint sovereignty arising as a juridical consequence of the 1821 succession. State succession was one of the ways in which territorial sovereignty had passed from one State to another and there seemed to be no reason in principle why a succession should not have created a joint sovereignty where a single and undivided maritime area passed to two or more new States. The Chamber thus saw the 1917 judgement as using the term condominium to describe what it regarded as the joint inheritance by three States of waters which had belonged to a single State and in which there had been no maritime administrative boundaries in 1821 or indeed at the end of the Federal Republic of Central America in 1839.

Thus the *ratio decidendi* of the judgement appeared to be that there had, at the time of independence, been no delimitation between the three countries; and the waters of the Gulf had remained undivided and in a state of community which entailed a condominium or co-ownership. Further the existence of a com-

munity had been evidenced by continued and peaceful use of the waters by all the riparian States after independence.

As regards the status of the 1917 judgement, the Chamber observed that although the Court's jurisdiction had been contested by Nicaragua, which had also protested the judgement, it had nevertheless been a valid decision of a competent court. Honduras, which, on learning of the proceedings before the Court, had formally protested to El Salvador that it did not recognize the status of co-ownership in the waters of the Gulf, had, in the present case, relied on the principle that a decision in a judgment or an arbitral award could only be opposed to the parties. Nicaragua, a party to the 1917 case, was an intervener but not a Party in the case before the Chamber. It therefore did not appear that the Chamber was required to pronounce upon the question whether the 1917 judgement was *res judicata* between the States parties to it, only one of which was a Party to the present proceedings, a question which was not helpful in a case raising a question of the joint ownership of three coastal States. The Chamber had to make up its own mind on the status of the waters of the Gulf, taking such account of the 1917 decision as it appeared to the Chamber to merit.

The opinion of the Chamber on the regime of the historic waters of the Gulf paralleled the opinion expressed in the 1917 judgement. The Chamber found that, reserving the question of the 1900 Honduras/Nicaragua delimitation, the Gulf waters, other than the 3-mile maritime belt, were historic waters and subject to a joint sovereignty of the three coastal States, basing itself on the following reasons. As to the historic character of the Gulf waters, there were the consistent claims of the three coastal States and the absence of protest from other States. As to the character of rights in the waters of the Gulf, these had been waters of a single-State bay during the greater part of their known history and had not been divided or apportioned between the different administrative units which became the three coastal States. There had been no attempt to divide and delimit the waters according to the principle of *uti possidetis juris*, this being a fundamental difference between the land areas and the maritime area. The delimitation effected between Nicaragua and Honduras in 1900, which had substantially been an application of the method of equidistance, gave no clue that it had been in any way inspired by the application of the *uti possidetis juris*. A joint succession of the three States to the maritime area therefore seemed to be the logical outcome of the principle of *uti possidetis juris* itself.

The Chamber noted that Honduras, whilst arguing against the condominium, did not consider it sufficient simply to reject it, but proposed an alternative idea, that of "community of interests" or of "interest". That there was a community of interests of the three coastal States of the Gulf was not open to doubt, but it seemed odd to postulate such a community as an argument against a condominium, which was almost an ideal embodiment of the community of interest requirements of equality of user, common legal rights and the "exclusion of any preferential privilege". The essential feature of the "community of interests" existing, according to Honduras, in respect of the waters of the Gulf, and which distinguished it from the *condominio* referred to by the Central American Court or the condominium asserted by El Salvador, was that the "community of interests" did not merely permit of a delimitation but necessitated it.

El Salvador for its part was not suggesting that the waters subject to joint sovereignty could not be divided, if there was agreement to do so. What it maintained was that a decision on the status of the waters was an essential prereq-

uisite to the process of delimitation. Moreover the geographical situation of the Gulf was such that mere delimitation without agreement on questions of passage and access would leave many practical problems unsolved.

The Chamber noted that the normal geographical closing line of the Bay would be the line Punta Amapala to Punta Cosigüina; it rejected a thesis elaborated by El Salvador of an "inner gulf" and an "outer gulf", based on a reference in the 1917 judgement to an inner closing line, there being nothing in the judgement to support the suggestion that Honduran legal interests in the Gulf waters were limited to the area inside the inner line. Recalling that there had been considerable argument between the Parties about whether the closing line of the Gulf was also a baseline, the Chamber accepted the definition of it as the ocean limit of the Gulf, which however had to be the baseline for whatever regime lay beyond it, which was necessarily different from that of the Gulf.

As to the legal status of the waters inside the Gulf closing line other than the 3-mile maritime belts, the Chamber considered whether or not they were "internal waters"; noting that rights of passage through them had to be available to vessels of third States seeking access to a port in any of the three coastal States, it observed that it might be sensible to regard those waters, in so far as they were the subject of the condominium or co-ownership, as *sui generis*. The essential juridical status of those waters was however the same as that of internal waters, since they were claimed *à titre de souverain* and were not territorial sea.

With regard to the 1900 Honduran/Nicaraguan delimitation line, the Chamber found, from the conduct of El Salvador, that the existence of the delimitation had been accepted by it in the terms indicated in the 1917 judgement.

In connection with any delimitation of the waters of the Gulf, the Chamber found that the existence of joint sovereignty in all the waters subject to a condominium other than those subject to the treaty or customary delimitations meant that Honduras had existing legal rights (not merely an interest) in the Gulf waters up to the bay closing line, subject of course to the equivalent rights of El Salvador and Nicaragua.

Regarding the question of the waters outside the Gulf, the Chamber observed that it involved entirely new concepts of law unthought of in 1917, in particular the continental shelf and the exclusive economic zone. There was also a prior question about territorial sea. The littoral maritime belts of 1 marine league along the coastlines of the Gulf were not truly territorial seas in the sense of the modern law of the sea. For a territorial sea normally had beyond it the continental shelf, and either waters of the high seas or an exclusive economic zone and the maritime belts within the Gulf might not have outside them any of those areas. The maritime belts might properly be regarded as the internal waters of the coastal State, even though subject, as indeed were all the waters of the Gulf, to rights of innocent passage.

The Chamber therefore found that there was a territorial sea proper seawards of the closing line of the Gulf and, since there was a condominium of the waters of the Gulf, there was a tripartite presence at the closing line and Honduras was not locked out from rights in respect of the ocean waters outside the bay. It was only seaward of the closing line that modern territorial seas could exist, since otherwise the Gulf waters could not be waters of an historic bay, which the Parties and the intervening State agreed to be the legal position. And

if the waters internal to that bay were subject to a threefold joint sovereignty, it was the *three* coastal States that were entitled to territorial sea outside the bay.

As for the legal régime of the waters, seabed and subsoil off the closing line of the Gulf, the Chamber first observed that the problem had to be confined to the area off the baseline but excluding a 3-mile, or 1-marine-league, strip of it at either extremity, corresponding to the existing maritime belts of El Salvador and Nicaragua respectively. At the time of the Central American Court's decision the waters outside the remainder of the baseline had been high seas. Nevertheless the modern law of the sea had added territorial sea extending from the baseline, had recognized continental shelf as extending beyond the territorial sea and belonging *ipso jure* to the coastal State, and had conferred a right on the coastal State to claim an exclusive economic zone extending up to 200 miles from the baseline of the territorial sea.

Since the legal situation on the landward side of the closing line was one of joint sovereignty, it followed that all three of the joint sovereigns had to be entitled outside the closing line to territorial sea, continental shelf and exclusive economic zone. Whether that situation ought to remain in being or be replaced by a division and delimitation into three separate zones was, as inside the Gulf also, a matter for the three States to decide. Any such delimitation of maritime areas would fall to be effected by agreement on the basis of international law.

XII. *Effect of Judgment for the intervening State* (paras. 421-424)

Turning to the question of the effect of its Judgment for the intervening State, the Chamber observed that the terms in which intervention was granted were that Nicaragua would not become party to the proceedings. Accordingly the binding force of the Judgment for the Parties, as contemplated by Article 59 of the Statute of the Court, did not extend to Nicaragua as intervener.

In its Application for permission to intervene, Nicaragua had stated that it "intends to subject itself to the binding effect of the decision", but from the written statement submitted by Nicaragua it was clear that Nicaragua did not now regard itself as obligated to treat the Judgment as binding upon it. With regard to the effect, if any, of the statement in Nicaragua's Application, the Chamber noted that its Judgment of 13 September 1990 emphasized the need, if an intervener was to become a party, for the consent of the existing parties to the case; it observed that if an intervener became a party, and was thus bound by the judgment, it became entitled equally to assert the binding force of the judgment against the other parties. Noting that neither party had given any indication of consent to Nicaragua's being recognized to have any status enabling it to rely on the Judgment, the Chamber concluded that in the circumstances of the case the Judgment was not *res judicata* for Nicaragua.

Operative paragraphs (paras. 425-432)

"425. For the reasons set out in the present Judgment, in particular paragraphs 68 to 103 thereof,

THE CHAMBER,

Unanimously,

Decides that the boundary line between the Republic of El Salvador and the Republic of Honduras in the first sector of their common frontier

not described in Article 16 of the General Treaty of Peace signed by the Parties on 30 October 1980 is as follows:

From the international tripoint known as El Trifinio on the summit of the Cerro Montecristo (point A on map No. I annexed;* coordinates: 14° 25′ 10″ N, 89° 21′ 20″ W), the boundary runs in a generally easterly direction along the watershed between the rivers Frío or Sesecapa and Del Rosario as far as the junction of this watershed with the watershed of the basin of the *quebrada* de Pomola (point B on map No. I annexed; coordinates: 14° 25′ 05″ N, 89° 20′ 41″ W); thereafter in a north-easterly direction along the watershed of the basin of the *quebrada* de Pomola until the junction of this watershed with the watershed between the *quebrada* de Cipresales and the *quebrada* del Cedrón, Peña Dorada and Pomola proper (point C on map No. I annexed; coordinates: 14° 25′ 09″ N, 89° 20′ 30″ W); from that point, along the last-named watershed as far as the intersection of the centre-lines of the *quebradas* of Cipresales and Pomola (point D on map No. I annexed; coordinates: 14° 24′ 42″ N, 89° 18′ 19″ W); thereafter, downstream along the centre-line of the *quebrada* de Pomola, until the point on that centre-line which is closest to the boundary marker of Pomola at El Talquezalar; and from that point in a straight line as far as that marker (point E on map No. I annexed; coordinates: 14° 24′ 51″ N, 89° 17′ 54″ W); from there in a straight line in a south-easterly direction to the boundary marker of the Cerro Piedra Menuda (point F on map No. I annexed; coordinates: 14° 24′ 02″ N, 89° 16′ 40″ W), and thence in a straight line to the boundary marker of the Cerro Zapotal (point G on map No. I annexed; coordinates: 14° 23′ 26″ N, 89° 14′ 43″ W); for the purposes of illustration, the line is indicated on map No. I annexed.

426. For the reasons set out in the present Judgment, in particular paragraphs 104 to 127 thereof,

THE CHAMBER,

Unanimously,

Decides that the boundary line between the Republic of El Salvador and the Republic of Honduras in the second sector of their common frontier not described in article 16 of the General Treaty of Peace signed by the Parties on 30 October 1980 is as follows:

From the Peña de Cayaguanca (point A on map No. II annexed; coordinates: 14° 21′ 54″ N, 89° 10′ 11″ W), the boundary runs in a straight line somewhat south of east to the Loma de Los Encinos (point B on map No. II annexed; coordinates: 14° 21′ 08″ N, 89° 08′ 54″ W), and from there in a straight line to the hill known as El Burro or Piedra Rajada (point C on map No. II annexed; coordinates: 14° 22′ 46″ N, 89° 07′ 32″ W), from there the boundary runs in a straight line to the head of the *quebrada* Copantillo, and follows the middle of the *quebrada* Copantillo downstream to its confluence with the river Sumpul (point D on map No. II annexed; coordinates: 14° 24′ 12″ N, 89° 06′ 07″ W), and then follows the middle of the river Sumpul downstream to its confluence with the *quebrada* Chiquita or Oscura (point E on map No. II annexed; coordinates: 14° 20′ 25″

*Maps are not annexed for technical reasons.

N, 89° 04′ 57″ W); for the purposes of illustration, the line is indicated on map No. II annexed.

427. For the reasons set out in the present Judgment, in particular paragraphs 128 to 185 thereof,

THE CHAMBER,

Unanimously,

Decides that the boundary line between the Republic of El Salvador and the Republic of Honduras in the third sector of their common frontier not described in article 16 of the General Treaty of Peace signed by the Parties on 30 October 1980, is as follows:

From the Pacacio boundary marker (point A on map No. III annexed; coordinates: 14° 06′ 28″ N, 88° 49′ 18″ W) along the río Pacacio upstream to a point (point B on map No. III annexed; coordinates: 14° 06′ 38″ N, 88° 48′ 47″ W), west of the Cerro Tecolate or Los Tecolates; from there up the *quebrada* to the crest of the Cerro Tecolate or Los Tecolates (point C on map No. III annexed; coordinates: 14° 06′ 33″ N, 88° 48′ 18″ W), and along the watershed of this hill as far as a ridge approximately 1 kilometre to the northeast (point D on map No. III annexed; coordinates: 14° 06′ 48″ N, 88° 47′ 52″ W); from there in an easterly direction to the neighbouring hill above the source of the Torrente La Puerta (point E on map No. III annexed; coordinates: 14° 06′ 48″ N, 88° 47′ 31″ W) and down that stream to where it meets the river Gualsinga (point F on map No. III annexed; coordinates: 14° 06′ 19″ N, 88° 47′ 01″ W); from there the boundary runs along the middle of the river Gualsinga downstream to its confluence with the river Sazalapa (point G on map No. III annexed; coordinates: 14° 06′ 12″ N, 88° 46′ 58″ W), and thence upstream along the middle of the river Sazalapa to the confluence of the *quebrada* Llano Negro with that river (point H on map No. III annexed; coordinates: 14° 07′ 11″ N, 88° 44′ 21″ W); from there south-eastwards to the top of the hill (point I on map No. III annexed; coordinates: 14° 07′ 01″ N, 88° 44′ 07″ W), and thence south-eastwards to the crest of the hill marked on the map as a spot height of 1,017 metres (point J on map No. III annexed; coordinates: 14° 06′ 45″ N, 88° 43′ 45″ W); from there the boundary, inclining still more to the south, runs through the triangulation point known as La Cañada (point K on map No. III annexed; coordinates: 14° 06′ 00″ N, 88° 43′ 52″ W) to the ridge joining the hills indicated on the map as Cerro El Caracol and Cerro El Sapo (through point L on map No. III annexed; coordinates: 14° 05′ 23″ N, 88° 43′ 47″ W) and from there to the feature marked on the map as the Portillo El Chupa Miel (point M on map No. III annexed; coordinates: 14° 04′ 35″ N, 88° 44′ 10″ W); from there, following the ridge, to the Cerro El Cajete (point N on map No. III annexed; coordinates: 14° 03′ 55″ N, 88° 44′ 20″ W), and thence to the point where the present-day road from Arcatao to Nombre de Jesús passes between the Cerro El Ocotillo and the Cerro Lagunetas (point O on map No. III annexed: coordinates: 14° 03′ 18″ N, 88° 44′ 16″ W); from there south-eastwards to the crest of a hill marked on the map as a spot height of 848 metres (point P on map No. III annexed; coordinates: 14° 02′ 58″ N, 88° 43′ 56″ W); from there slightly south of eastwards to a *quebrada* and down the bed of the *quebrada* to its junction with the Gualcuquín river (point Q on map

No. III annexed; coordinates: 14° 02′ 42″ N, 88° 42′ 34″ W); the boundary then follows the middle of the Gualcuquín river downstream to the Poza del Cajón (point R on map No. III annexed; coordinates: 14° 01′ 28″ N, 88° 41′ 10″ W); for purposes of illustration, this line is shown on map No. III annexed.

428. For the reasons set out in the present Judgment, in particular paragraphs 186 to 267 thereof,

THE CHAMBER,

By four votes to one,

Decides that the boundary line between the Republic of El Salvador and the Republic of Honduras in the fourth sector of their common frontier not described in article 16 of the General Treaty of Peace signed by the Parties on 30 October 1980, is as follows:

From the source of the Orilla stream (point A on map No. IV annexed; coordinates: 13° 53′ 46″ N, 88° 20′ 36″ W) the boundary runs through the pass of El Jobo to the source of the Cueva Hedionda stream (point B on map No. IV annexed; coordinates: 13° 53′ 39″ N, 88° 20′ 20″ W), and thence down the middle of that stream to its confluence with the river Las Cañas (point C on map No. IV annexed; coordinates: 13° 53′ 19″ N, 88° 19′ 00″ W), and thence following the middle of the river upstream as far as a point (point D on map No. IV annexed; coordinates: 13° 56′ 14″ N, 88° 15′ 33″ W) near the settlement of Las Piletas; from there eastward over a col indicated as point E on map No. IV annexed (coordinates: 13° 56′ 19″ N, 88° 14′ 12″ W), to a hill indicated as point F on map No. IV annexed (coordinates: 13° 56′ 11″ N, 88° 13′ 40″ W), and then northeastward to a point on the river Negro or Pichigual (marked G on map No. IV annexed; coordinates: 13° 57′ 12″ N, 88° 13′ 11″ W); downstream along the middle of the river Negro or Pichigual to its confluence with the river Negro-Quiagara (point H on map No. IV annexed; coordinates: 13° 59′ 37″ N, 88° 14′ 18″ W); then upstream along the middle of the river Negro-Quiagara as far as the Las Pilas boundary marker (point I on map IV annexed; coordinates: 14° 00′ 02″ N, 88° 06′ 29″ W), and from there in a straight line to the Malpaso de Similatón (point J on map No. IV annexed; coordinates: 13° 59′ 28″ N, 88° 04′ 22″ W); for the purposes of illustration, the line is indicated on map No. IV annexed.

IN FAVOUR: *Judge* Sette-Camara, *President of the Chamber; President* Sir Robert Jennings; *Vice-President* Oda; *Judge* ad hoc Torres Bernárdez;

AGAINST: *Judge* ad hoc Valticos.

429. For the reasons set out in the present Judgment, in particular paragraphs 268 to 305 thereof,

THE CHAMBER,

Unanimously,

Decides that the boundary line between the Republic of El Salvador and the Republic of Honduras in the fifth sector of their common frontier not described in article 16 of the General Treaty of Peace signed by the Parties on 30 October 1980, is as follows:

From the confluence with the river Torola of the stream identified in the General Treaty of Peace as the *quebrada* de Mansupucagua (point A on map No. V annexed; coordinates: 13° 53′ 59″ N, 87° 54′ 30″ W) the boundary runs upstream along the middle of the river Torola as far as its confluence with a stream known as the *quebrada* del Arenal or *quebrada* de Aceituno (point B on map No. V annexed; coordinates: 13° 53′ 50″ N, 87° 50′ 40″ W); thence up the course of that stream as far as a point at or near its source (point C on map No. V annexed; coordinates: 13° 54′ 30″ N, 87° 50′ 20″ W), and thence in a straight line somewhat north of east to a hill some 1,100 metres high (point D on map No. V annexed; coordinates: 13° 55′ 03″ N, 87° 49′ 50″ W); thence in a straight line to a hill near the river Unire (point E on map No. V annexed; coordinates: 13° 55′ 16″ N, 87° 48′ 20″ W), and thence to the nearest point on the river Unire; downstream along the middle of that river to the point known as the Paso de Unire (point F on map No. V annexed; coordinates: 13° 52′ 07″ N, 87° 46′ 01″ W); for the purposes of illustration, the line is indicated on map No. V annexed.

430. For the reasons set out in the present Judgment, in particular paragraphs 306 to 322 thereof,

THE CHAMBER,

Unanimously,

Decides that the boundary line between the Republic of El Salvador and the Republic of Honduras in the sixth sector of their common frontier not described in article 16 of the General Treaty of Peace signed by the Parties on 30 October 1980, is as follows:

From the point on the river Goascorán known as Los Amates (point A on map No. VI annexed; coordinates: 13° 26′ 28″ N, 87° 43′ 25″ W), the boundary follows the course of the river downstream, in the middle of the bed, to the point where it emerges in the waters of the Bahía La Unión, Gulf of Fonseca, passing to the north-west of the Islas Ramaditas, the coordinates of the endpoint in the bay being 13° 24′ 26″ N, 87° 49′ 05″ W; for the purposes of illustration, the line is indicated on map No. VI annexed.

431. For the reasons set out in the present Judgment, in particular paragraphs 323 to 368 thereof,

THE CHAMBER,

(1) By four votes to one,

Decides that the Parties, by requesting the Chamber, in article 2, paragraph 2, of the Special Agreement of 24 May 1986, 'to determine the legal situation of the islands . . . ', have conferred upon the Chamber jurisdiction to determine, as between the Parties, the legal situation of all the islands of the Gulf of Fonseca; but that such jurisdiction should only be exercised in respect of those islands which have been shown to be the subject of a dispute;

IN FAVOUR: *Judge* Sette-Camara, *President of the Chamber; President* Sir Robert Jennings; *Vice-President* Oda; *Judge* ad hoc Valticos;

AGAINST: *Judge* ad hoc Torres Bernárdez.

(2) *Decides* that the islands shown to be in dispute between the Parties are:

(i) by four votes to one, El Tigre;

IN FAVOUR: *Judge* Sette-Camara, *President of the Chamber; President* Sir Robert Jennings; *Vice-President* Oda; *Judge* ad hoc Valticos;

AGAINST: *Judge* ad hoc Torres Bernárdez;

(ii) unanimously, Meanguera and Meanguerita.

(3) Unanimously,

Decides that the island of El Tigre is part of the sovereign territory of the Republic of Honduras.

(4) Unanimously,

Decides that the island of Meanguera is part of the sovereign territory of the Republic of El Salvador.

(5) By four votes to one,

Decides that the island of Meanguerita is part of the sovereign territory of the Republic of El Salvador;

IN FAVOUR: *Judge* Sette-Camara, *President of the Chamber; President* Sir Robert Jennings; *Vice-President* Oda; Joe ad hoc Valticos;

AGAINST: *Judge* ad hoc Torres Bernárdez.

432. For the reasons set out in the present Judgment, in particular paragraphs 369 to 420 thereof,

THE CHAMBER,

(1) By four votes to one,

Decides that the legal situation of the waters of the Gulf of Fonseca is as follows: the Gulf of Fonseca is an historic bay the waters whereof, having previously to 1821 been under the single control of Spain, and from 1821 to 1839 of the Federal Republic of Central America, were thereafter succeeded to and held in sovereignty by the Republic of El Salvador, the Republic of Honduras, and the Republic of Nicaragua, jointly, and continue to be so held, as defined in the present Judgment, but excluding a belt, as at present established, extending 3 miles (1 marine league) from the littoral of each of the three States, such belt being under the exclusive sovereignty of the coastal State, and subject to the delimitation between Honduras and Nicaragua effected in June 1900, and to the existing rights of innocent passage through the 3-mile belt and the waters held in sovereignty jointly; the waters at the central portion of the closing line of the Gulf, that is to say, between a point on that line 3 miles (1 marine league) from Punta Amapala and a point on that line 3 miles (1 marine league) from Punta Cosigüina, are subject to the joint entitlement of all three States of the Gulf unless and until a delimitation of the relevant maritime area be effected;

IN FAVOUR: *Judge* Sette-Camara, *President of the Chamber; President* Sir Robert Jennings; *Judge* ad hoc Valticos; *Judge* ad hoc Torres Bernárdez;

AGAINST: *Vice-President* Oda.

(2) By four votes to one,

Decides that the Parties, by requesting the Chamber, in article 2, paragraph 2, of the Special Agreement of 24 May 1986, "to determine the legal situation of the ... maritime spaces", have not conferred upon the Chamber jurisdiction to effect any delimitation of those maritime spaces, whether within or outside the Gulf;

IN FAVOUR: *Judge* Sette-Camara, *President of the Chamber; President* Sir Robert Jennings; *Vice-President* Oda; *Judge* ad hoc Valticos;

AGAINST: *Judge* ad hoc Torres Bernárdez.

(3) By four votes to one,

Decides that the legal situation of the waters outside the Gulf is that, the Gulf of Fonseca being an historic bay with three coastal States, the closing line of the Gulf constitutes the baseline of the territorial sea; the territorial sea, continental shelf and exclusive economic zone of El Salvador and those of Nicaragua off the coasts of those two States are also to be measured outwards from a section of the closing line extending 3 miles (1 marine league) along that line from Punta Amapala (in El Salvador) and 3 miles (1 marine league) from Punta Cosigüina (in Nicaragua) respectively; but entitlement to territorial sea, continental shelf and exclusive economic zone seaward of the central portion of the closing line appertains to the three States of the Gulf, El Salvador, Honduras and Nicaragua; and that any delimitation of the relevant maritime areas is to be effected by agreement on the basis of international law;

IN FAVOUR: *Judge* Sette-Camara, *President of the Chamber; President* Sir Robert Jennings; *Judge* ad hoc Valticos; *Judge* ad hoc Torres Bernárdez;

AGAINST: *Vice-President* Oda."

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Vice-President Oda appended a declaration to the Judgment;[362] Judges ad hoc Valticos and Torres Bernárdez appended separate opinions;[363] Vice-President Oda appended a dissenting opinion.[364]

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6. INTERNATIONAL LAW COMMISSION[365]

FORTY-FOURTH SESSION OF THE COMMISSION[366]

The International Law Commission held its forty-fourth session at Geneva from 4 May to 24 July 1992.

In the framework of the topic "Draft Code of Crimes against the Peace and Security of Mankind", the Commission considered the tenth report of the Special Rapporteur dealing with the question of an international criminal jurisdiction.[367] Following the discussion, the Commission established a Working Group to consider the issue further. At the end of the discussion of the Working Group's report, the Commission decided to include the report as an annex to its report on the session and accepted as a basis for its future work the propositions enumerated in paragraph 396 of part A of the Working Group's report and the broad approach which was set out in the report. The Commission furthermore

concluded that: (*a*) through the ninth[368] and tenth[369] reports of the Special Rapporteur and the debates thereon in plenary; and through the report of the Working Group, it had concluded the task of analysis of "the question of establishing an international criminal court or other international criminal trial mechanism", entrusted to it by the General Assembly in 1989;[370] (*b*) the more detailed study in the Working Group's report confirmed the view that a structure along the lines of that suggested in the Working Group's report could be a workable system; (*c*) further work on the issue required a renewed mandate from the General Assembly and needed to take the form not of still further general or exploratory studies, but of a detailed project, in the form of a draft statute; and (*d*) it was now a matter for the General Assembly to decide whether the Commission should undertake the project for an international criminal jurisdiction and on what basis.

The topic "State responsibility" was considered by the Commission on the basis of the third[371] and fourth[372] reports of the Special Rapporteur which were mainly devoted to the question of countermeasures and contained four articles, namely, articles 11, 12, 13 and 14, as well as a new article 5 *bis* relating to the case of a plurality of injured States. At the conclusion of its debate, the Commission agreed to refer all the above-mentioned articles to the Drafting Committee. The Commission further received from the Drafting Committee a report[373] which contained a new paragraph 2 to article 1 of Part Two, as well as article 6 (Cessation of wrongful conduct), article 6 *bis* (Reparation), article 7 (Restitution in kind), article 8 (Compensation), article 10 (Satisfaction) and article 10 *bis* (Assurances and guarantees of non-repetition), which had been adopted on first reading by the Drafting Committee at the current session. In line with its policy of not adopting articles not accompanied by commentaries, the Commission agreed to defer action on the proposed draft articles to its next session. At the current session the Commission merely took note of the report of the Drafting Committee.

As regards the topic "International liability for injurious consequences arising out of acts not prohibited by international law", the Commission considered the eighth report[374] of the Special Rapporteur in which he proposed nine draft articles on the obligations of preventing transboundary harm. The eighth report also made further proposals on some of the terms used in article 2, such as the concepts of risk and harm. At the conclusion of the consideration of the topic, the Commission, owing to uncertainties remaining among members of the Commission on some general issues, established the Working Group to consider some of the general issues relating to the scope, the approach to be taken and the possible direction of the future work on the topic. On the basis of the recommendations of the Working Group, the Commission decided that it might be premature to make a final decision on the precise scope of the topic. It agreed, however, that, in order to facilitate progress on the subject, it would be prudent to approach its consideration within the broadly identified area in stages and to establish priorities for issues to be covered. Within that understanding, the Commission decided that the topic should be understood as comprising issues of both prevention and remedial measures. However, prevention should be considered first; only after having completed its work on that first part of the topic would the Commission proceed to the question of remedial measures. It would be premature to decide at the current stage on the nature of either the articles to be drafted or the eventual form of the instrument that would emerge from its work

on the topic. It would be prudent to defer such a decision, in accordance with the usual practice of the Commission, until the completion of the work on the topic. Furthermore, the Commission deferred any formal change of the title of the topic, since in the light of the further work on it additional changes in the title might be necessary. Finally, the Commission requested that the Special Rapporteur in his next report should examine further the issues of prevention only in respect of activities having a risk of causing transboundary harm and should propose a revised set of draft articles to that effect.

As to the topic "Relations between States and international organizations (second part of the topic)", the Commission, bearing in mind that in the next few years it would be fully occupied with the finalization of draft articles on at least three topics and the preparation of articles on other topics, considered it wise to put aside for a moment the consideration of a topic which did not seem to respond to a pressing need of States or international organizations. Therefore, the Commission decided not to pursue further, during the current term of office of its members, the consideration of the topic, unless the General Assembly decided otherwise.

Consideration by the General Assembly

At its forty-seventh session the General Assembly had before it the report of the International Law Commission on the work of its forty-fourth session.[375] By its resolution 47/33 of 25 November 1992,[376] adopted on the recommendation of the Sixth Committee,[377] the General Assembly took note of the report of the International Law Commission on the work of its forty-fourth session; recommended that, taking into account the comments of Governments, the Commission should continue its work on the topics in its current programme; invited States to submit to the Secretary-General written comments on the report of the Working Group on the question of an international criminal jurisdiction;[378] requested the Commission to continue its work on that question by undertaking the project for the elaboration of a draft statute for an international criminal court as a matter of priority as from its next session, beginning with an examination of the issues identified in the report of the Working Group and in the debate in the Sixth Committee with a view to drafting a statute on the basis of the report of the Working Group, taking into account the views expressed during the debate in the Sixth Committee as well as any written comments received from States, and to submit a progress report to the General Assembly at its forty-eighth session; endorsed the decision of the Commission[379] not to pursue further, during the current term of office of its members, the consideration of the second part of the topic "Relations between States and international organizations"; and expressed its appreciation for the efforts of the Commission to improve its procedures and methods of work.

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7. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW[380]

TWENTY-FIFTH SESSION OF THE COMMISSION[381]

The United Nations Commission on International Trade Law held its twenty-fifth session in New York from 4 to 22 May 1992.

With respect to international payments, the Commission had before it a note by the Secretariat[382] containing suggestions for the final review of the text of the draft Model Law on International Credit Transfers as contained in annex I to the report of the Commission on the work of its twenty-fourth session.[383] Having considered articles 16 to 18 of the draft Model Law, the Commission proceeded with the review of issues identified by the Secretariat in the above-mentioned note and the entire text of the draft was then submitted to a drafting group for implementation of the decisions taken by the Commission and revision to ensure consistency within the text and between language versions. Finally, the Commission, after consideration of the text of the draft Model Law as revised by the drafting group, adopted the UNCITRAL Model Law on International Credit Transfers;[384] requested the Secretary-General to transmit the text of the Model Law, together with the relevant *travaux préparatoires*, to Governments and other interested bodies; and recommended that all States give due consideration to the Model Law when they enacted or revised their laws, in view of the current need for uniformity of the law applicable to international credit transfers.

In connection with the question of international countertrade, the Commission had before it the following draft materials for the legal guide on the subject: the covering report,[385] draft chapters I to XV,[386] draft illustrative provisions[387] and chapter summaries.[388] After the discussion, the Commission adopted the UNCITRAL Legal Guide on International Countertrade Transactions; invited the General Assembly to recommend the use of the Legal Guide for international countertrade transactions; and requested the Secretary-General to take effective measures for the widespread distribution and promotion of the use of the Legal Guide. Moreover, the Secretariat was requested to edit the text of the Legal Guide adopted by the Commission and to publish it expeditiously.[389]

With respect to the legal issues of electronic data interchange (EDI), the Commission had before it the report of the Working Group on International Payments on the work of its twenty-fourth session,[390] which contained recommendations for future work of the Commission with respect to the legal issues of EDI. The report suggested, *inter alia*, that any future work by the Commission in the field should be aimed at facilitating the increased use of EDI and in connection with it the Working Group recommended that the Commission should undertake the preparation of legal norms and rules on the use of EDI in international trade. As regards the possible preparation of a standard communication agreement for worldwide use in international trade, the Working Group agreed that, at least currently, it was not necessary for the Commission to develop a standard communication agreement. After discussion, the Commission endorsed the recommendation contained in the report of the Working Group[391] and entrusted the preparation of legal rules on EDI to the Working Group on International Payments, which it renamed the Working Group on Electronic Data Interchange.

With respect to the question of procurement, the Commission had before it the report of the Working Group on the work of its thirteenth[392] and fourteenth[393] sessions. The Commission noted with approval that it was the intention of the Working Group to submit the Model Law on procurement to the Commission at its twenty-sixth session for finalization and adoption.

With regard to the question of guarantees and stand-by letters of credit, the Commission had before it the reports of the Working Group on International Contract Practices on the work of its sixteenth[394] and seventeenth sessions,[395] during which it had examined draft articles 1 to 27 of the uniform law prepared by the Secretariat. 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.

Considering the question of endorsing INCOTERMS 1990[396] for worldwide use, the Commission agreed that INCOTERMS 1990 succeeded in providing a modern set of international rules for the interpretation of the most commonly used trade terms in international trade and commended the use of INCOTERMS 1990 in international sales transactions.

In connection with the decision of the Commission undertaken at its twenty-first session to establish a system for collecting and disseminating information on court decisions and arbitral awards relating to normative texts emanating from the work of the Commission,[397] it was reported at the current session that the Secretariat had established the system. The Commission noted the fact with appreciation and satisfaction.

Dealing with the question of coordination of work, the Commission had before it a note by the Secretariat on assistance by multilateral organizations and bilateral aid agencies in the modernization of commercial laws in developing countries.[398] The Commission noted with appreciation the efforts of the Secretariat to monitor the activities in the area in question.

The Commission also considered the status of signatures, ratifications, accessions and approvals of conventions that were the outcome of its work[399] as well as the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards[400] and the jurisdictions that had enacted legislation based on the UNCITRAL Model Law on International Commercial Arbitration. The Commission had before it a note by the Secretariat on the status of those conventions and of the Model Law[401] and after examining it took note of the actions in the field.

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 these fields during the period between the twenty-fourth and the current session of the Commission as well as possible future activities.[402] The Commission expressed its appreciation to all those who had participated in the organization of UNCITRAL seminars, and in particular those that had given financial assistance to the programme of seminars and the UNCITRAL Trust Fund for symposia. The Commission also expressed its appreciation to the Secretariat for its efforts to conduct an expanded programme of seminars and symposia.

Furthermore, recalling its decision taken at its twenty-fourth session to entrust the Secretariat with the task of organizing, in the context of the twenty-fifth session of the Commission, a Congress on International Trade Law,[403] the Commission noted with appreciation the preparations by the Secretariat for the Congress, which was to take place during the third week of the Commission's session, that is from 18 to 22 May 1992. It was noted that the Secretariat had published the final programme of the Congress.[404] The Commission also recalled that the Congress — the session of which would be devoted to the following areas: process and value of unification of commercial law; sale of goods;

supply of services; payments, credits and banking; electronic data interchange; transport; dispute settlement; and the future role of UNCITRAL—was to be a contribution by the Commission to the activities of the United Nations Decade of International Law.

Consideration by the General Assembly

At its forty-seventh session, the General Assembly, in its resolution 47/34 of 25 November 1992,[405] adopted on the recommendation of the Sixth Committee,[406] took note with appreciation of the report of the United Nations Commission on International Trade Law on the work of its twenty-fifth session;[407] took note with particular satisfaction of the completion and adoption by the Commission of the Model Law on International Credit Transfers[408] and of the Legal Guide on International Countertrade Transactions;[409] recommended the use of the Legal Guide to parties involved in international countertrade transactions; noted with satisfaction the entry into force on 1 November 1992 of the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules);[410] reaffirmed the mandate of the Commission, as the core legal body within the United Nations system in the field of international trade law, to coordinate legal activities in that field in order to avoid duplication of effort and to promote efficiency, consistency and coherence in the unification and harmonization of international trade law; reaffirmed the importance, in particular for developing countries, of the work of the Commission concerned with training and assistance in the field of international trade law and the desirability for it to sponsor seminars and symposia to provide such training and assistance; expressed its appreciation to the Commission for organizing, as a contribution to the activities of the United Nations Decade of International Law, a Congress under the theme "Uniform Commercial Law in the twenty-first century", held in New York from 18 to 22 May 1992, which provided a useful assessment of the progress made to date in the unification and harmonization of international trade law and would assist the Commission and other organizations involved in the unification and harmonization of international trade law in laying out the course of their future work; repeated its invitation to those States that had not yet done so to consider signing, ratifying or acceding to the conventions elaborated under the auspices of the Commission; and requested the Fifth Committee to continue to consider granting travel assistance, within existing resources, to the least developed countries that were members of the Commission, as well as, on an exceptional basis, to other developing countries that were members of the Commission, at their request, to enable them to participate in the sessions of the Commission and its working groups.

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

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

By its resolution 47/29 of 25 November 1992,[411] adopted on the recommendation of the Sixth Committee,[412] the General Assembly, desirous of ensuring the effective participation of national liberation movements recognized

by the Organization of African Unity and/or by the League of Arab States, called upon 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 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character;[413] and urged the States concerned to accord to the delegations of the above-mentioned national liberation movements which were accorded observer status by international organizations, the facilities, privileges and immunities necessary for the performance of their functions in accordance with the 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 47/30 of 25 November 1992,[414] adopted on the recommendation of the Sixth Committee,[415] the General Assembly, having considered the report[416] of the Secretary-General on the status of the Protocols Additional to the Geneva Convention of 1949 and relating to the protection of victims of armed conflicts,[417] appreciated the virtually universal acceptance of the Geneva Conventions of 1949 for the protection of war victims[418] and the increasingly wide acceptance of the two additional Protocols of 1977; appealed to all States parties to the Geneva Conventions of 1949 that had not yet done so to consider becoming parties also to the additional Protocols at the earliest possible date; and called upon all States which were already parties to Protocol I, or those States not parties, on 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 47/31 of 25 November 1992,[419] adopted on the recommendation of the Sixth Committee,[420] the General Assembly took note of the report of the Secretary-General;[421] strongly condemned acts of violence against diplomatic and consular missions and representatives, as well as against missions and representatives to international intergovernmental organizations and officials of such organizations, and emphasized that such acts could never be justified; 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 missions, representatives and officials mentioned above 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 missions, representatives and officials mentioned above and to bring offenders to justice; recommended that States should cooperate closely through, *inter alia*, contacts between the diplomatic and consular missions and the receiving State, with regard to practical measures designed to enhance the protection, security

and safety of diplomatic and consular missions and representatives and with regard to the exchange of information on the circumstances of all serious violations thereof; 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 47/32 of 25 November 1992,[422] adopted on the recommendation of the Sixth Committee,[423] the General Assembly, recalling its resolution 44/23 of 17 November 1989, by which it had declared the period 1990-1999 the United Nations Decade of International Law, expressing its appreciation for the report of the Secretary-General,[424] submitted pursuant to Assembly resolution 46/53 of 19 December 1991, and having considered the report of the Working Group on the United Nations Decade of International Law submitted to the Sixth Committee,[425] expressed its appreciation to the Sixth Committee for the elaboration, within the framework of its Working Group, of the programme for the activities to be commenced during the second term (1993-1994) of the Decade, and requested the Working Group to continue its work at the forty-eighth session in accordance with its mandate and methods of work; and adopted the programme for the activities to be commenced during the second term (1993-1994) of the Decade as an integral part of the resolution, to which it was annexed.

(*e*) Additional protocol on consular functions to the Vienna Convention on Consular Relations

By its resolution 47/36 of 25 November 1992,[426] adopted on the recommendation of the Sixth Committee,[427] the General Assembly, having considered the report of the Secretary-General[428] containing the replies received from Member States and other States parties to the Vienna Convention on Consular Relations[429] concerning an additional protocol on consular functions to that Convention, noted with appreciation the valuable work done during its forty-fifth, forty-sixth and forty-seventh sessions on the basis of the proposal concerning the elaboration of an additional protocol on consular functions to the Vienna Convention on Consular Relations; urged States, in applying the Vienna Convention and corresponding provisions of other agreements, to accord full facilities to consular officers in the performance of their functions; and took note of the report of the Sixth Committee on the matter.[430]

(*f*) Protection of the environment in times of armed conflict

By its resolution 47/37 of 25 November 1992,[431] adopted on the recommendation of the Sixth Committee,[432] the General Assembly, recognizing the importance of the provisions of international law applicable to the protection of the environment in times of armed conflict and, in particular, both the rules of universal applicability laid down in the Hague Convention respecting the Laws and Customs of War on Land, of 18 October 1907, with the Regulations annexed thereto,[433] and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949,[434] and the applicable rules of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 1977,[435] and of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, of 1976,[436] expressing its deep concern about envi-

ronmental damage and depletion of natural resources, including the destruction of hundreds of oil-well heads and the release and waste of crude oil into the sea, during recent conflicts, noting that existing provisions of international law prohibited such acts, concerned that the provisions of international law prohibiting such acts might not be widely disseminated and applied, taking note of the Final Declaration of the Second Review Conference of the Parties to the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques,[437] taking note also of the Rio Declaration on Environment and Development,[438] adopted at the United Nations Conference on Environment and Development at Rio de Janeiro on 14 June 1992, in particular principle 24 thereof, and other relevant decisions of the Conference, and expressing its appreciation for the report of the Secretary-General[439] submitted pursuant to General Assembly decision 46/417 of 9 December 1991, urged States to take all measures to ensure compliance with the existing international law applicable to the protection of the environment in times of armed conflict; appealed to all States that not yet done so to consider becoming parties to the relevant international conventions; urged States to take steps to incorporate the provisions of international law applicable to the protection of the environment into their military manuals and to ensure that they were effectively disseminated; and requested the Secretary-General to invite the International Committee of the Red Cross to report on activities undertaken by the Committee and other relevant bodies with regard to the protection of the environment in times of armed conflict, and to submit the report to the General Assembly at its forty-eighth session.

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

In accordance with General Assembly resolution 46/58 of 9 December 1991, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of Organization met at United Nations Headquarters from 3 to 21 February 1992.[440]

The Special Committee began its work with a general debate on all items concerning its mandate. All delegations that participated in the debate referred to the fundamental changes that had occurred recently in the international political climate, as well as to the Summit Meeting of the Security Council at the level of Heads of State and Government, which had taken place on 31 January 1992. In this new atmosphere, it was said, the United Nations had an increased chance to play its vital role in the field of the maintenance of international peace and security and the peaceful settlement of disputes. There was widespread agreement on the need to enhance the effectiveness of the Organization to ensure that it would successfully meet the challenges of this new era of international cooperation. In this connection, the Special Committee was regarded as an appropriate forum for discussing ideas towards this goal, and its past achievements were underscored.

In connection with the proposal by the Secretary-General that he be authorized to request advisory opinions from the International Court of Justice, a request was made of the Legal Counsel of the United Nations for further clarification. Such clarification was made by the Legal Counsel at the 164th plenary meeting of the Special Committee, held on 18 February 1992.[441]

With respect to the topic of the maintenance of international peace and security, the Special Committee had before it the document submitted by the Russian Federation entitled "New issues for consideration in the Special Commit-

tee",[442] as set out in paragraph 14 of the report of the Special Committee to the General Assembly at its forty-fifth session;[443] a further proposal by the same delegation entitled "Draft declaration on the improvement of cooperation between the United Nations and regional organizations";[444] as well as the proposal submitted by a group of States entitled "Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter".[445] Under the same topic, the Special Committee also had before it a "Proposal submitted by the Socialist People's Libyan Arab Jamahiriya with a view to enhancing the effectiveness of the Security Council in regard to the maintenance of international peace and security",[446] as well as the working paper submitted by Cuba, entitled "Strengthening of the role of the United Nations in the maintenance of international peace and security".[447] Comments made during the debate on the above-mentioned documents are presented in the statement of the Rapporteur.[448]

With respect to the topic of the peaceful settlement of disputes between States, the Special Committee had before it the proposal submitted by Guatemala at the forty-fifth session of the General Assembly entitled "Conciliation rules of the United Nations".[449]

Upon the completion of the first reading of the draft conciliation rules, the Working Group of the Whole took note that the delegation of Guatemala offered to prepare and submit, at a later stage, a revised draft of its proposal, taking into consideration the comments made on the various articles of the draft conciliation rules.

Consideration by the General Assembly

By its resolution 47/38 of 25 November 1992,[450] adopted on the recommendation of the Sixth Committee,[451] the General Assembly took note of the report of the Special Committee,[452] and requested the Special Committee, at its session in 1993: (*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 continue its consideration of the proposal on the enhancement of cooperation between the United Nations and regional organizations; (ii) to continue its consideration of the proposal on the implementation of the provisions of the Charter related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter; (iii) to consider other specific proposals relating to the maintenance of international peace and security already submitted to the Special Committee or which might be submitted to it at its session in 1993; (*b*) to continue its work on the question of the peaceful settlement of disputes between States and, in that context: (i) to consider the proposal on United Nations rules for the conciliation of disputes between States; (ii) to consider other specific proposals relating to the question; (*c*) to consider various proposals with the aim of strengthening the role of the Organization and enhancing its effectiveness.

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

In accordance with General Assembly resolution 46/60 of 9 November 1991, the Committee on Relations with the Host Country continued its work, in conformity with General Assembly resolution 2819 (XXVI) of 15 December 1971.[453] During the period under review, the Committee held four meetings and approved the following recommendations and conclusions: considering that the

maintenance of appropriate conditions for the normal work of the delegations and the missions accredited to the United Nations was in the interest of the United Nations and all Member States, the Committee appreciated the efforts made by the host country for that purpose and was assured that all problems raised at its meetings would be duly settled in a spirit of cooperation and in accordance with international law; also considering that the security of the missions accredited to the United Nations and the safety of their personnel were indispensable for their effective functioning, the Committee appreciated the efforts made by the host country to that end and anticipated that the host country would continue to take all measures necessary to prevent any interference with the functioning of missions; concerning travel regulations issued by the host country with regard to personnel of certain missions and staff members of the Secretariat of certain nationalities, the Committee took note of the recent lifting of various travel controls by the host country. The Committee welcomed those decisions and expressed the hope that remaining travel restrictions would be removed by the host country as soon as possible. In that regard, the Committee also noted the positions of the affected Member States, of the Secretary-General and of the host country; and the Committee stressed the importance of the work of its Working Group concerning problems of financial indebtedness and welcomed the cooperation of all interested parties. It reminded all permanent missions to the United Nations and their personnel of their responsibilities to meet their financial obligations and took note of the concerns of the host country regarding the matter. With a view to resolving the issues relating thereto, the Committee strongly supported the continuation of the Working Group's efforts to find a solution to the problem.

Consideration by the General Assembly

By its resolution 47/35 of 25 November 1992,[454] adopted on the recommendation of the Sixth Committee,[455] the General Assembly endorsed the recommendations and conclusions of the Committee on Relations with the Host Country contained in paragraph 55 of its report; expressed its appreciation for the efforts made by the host country and hoped that outstanding problems raised at the meetings of the Committee would be duly resolved in a spirit of cooperation and in accordance with international law; welcomed the recent lifting of travel controls by the host country with regard to certain missions and staff members of the Secretariat of certain nationalities, and urged the host country to continue to abide by its obligations to the United Nations and the missions accredited to it; and stressed the importance of a positive perception of the work of the United Nations, and urged that efforts be continued to build up public awareness by explaining, through all available means, the importance of the role played by the United Nations and the missions accredited to it in the strengthening of international peace and security.

(*i*) Convention on jurisdictional immunities of States and their property

By its decision 47/414 of 25 November 1992,[456] adopted on the recommendation of the Sixth Committee,[457] the General Assembly took note of the report of the Working Group[458] established under its resolution 46/55 of 9 December 1991 to consider: (i) issues of substance arising out of the draft articles on jurisdictional immunities of States and their property, adopted by the International Law Commission at its forty-third session,[459] (ii) the question of the

convening of an international conference, to be held in 1994, or subsequently, to conclude a convention on jurisdictional immunities of States and their property; and decided to re-establish the Working Group at its forty-eighth session, in the framework of the Sixth Committee, to continue consideration of those issues in order to facilitate the successful conclusion of a convention.

(*j*) 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 decision 47/415 of 25 November 1992,[460] adopted on the recommendation of the Sixth Committee,[461] the General Assembly took note of the report of the Vice-Chairman of the Sixth Committee who presided over the consultations on 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,[462] held in accordance with its resolution 46/57 of 9 December 1991.

(*k*) Request for an advisory opinion from the International Court of Justice

By its decision 47/416 of 25 November 1992,[463] adopted on the recommendation of the Sixth Committee,[464] the General Assembly decided to continue its consideration of the item entitled "Request for an advisory opinion from the International Court of Justice" at its forty-eighth session.

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

By its resolution 47/28 of 25 November 1992,[465] adopted on the recommendation of the Fifth Committee,[466] the General Assembly took note with grave concern of the report submitted by the Secretary-General[467] on behalf of the members of the Administrative Committee on Coordination, and of the developments indicated therein; strongly deplored the unprecedented and still increasing number of fatalities which had occurred among United Nations personnel, including those engaged in peacekeeping operations; condemned and deplored the disregard for Article 105 of the Charter of the United Nations displayed by some Member States; reiterated in its entirety its resolution 45/240 of 21 December 1990; requested the Secretary-General to take all necessary measures to ensure the safety of United Nations personnel, as well as those engaged in peacekeeping and humanitarian operations; reminded host countries of their responsibility for the safety of peacekeeping and all United Nations personnel on their territory; strongly affirmed that disregard for the privileges and immunities of officials had always constituted one of the main obstacles to the implementation of the missions and programmes assigned to the organizations of the United Nations system by Member States; and requested the Secretary-General and Member States to continue their efforts to ensure respect for the privileges and immunities of officials.

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

By its resolution 47/6 of 21 October 1992,[468] the General Assembly took note with appreciation of the report of the Secretary-General on cooperation between the United Nations and the Asian-African Legal Consultative Committee;[469] noted with satisfaction 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 as well as 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.

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

1. INTERNATIONAL LABOUR ORGANIZATION[470]

The International Labour Conference, which held its 79th session at Geneva in June 1992, adopted certain amendments to its Standing Orders:[471]

(*a*) Amendments to article 4, paragraph 2 (Selection Committee);

(*b*) Amendments to article 9 (Adjustments to the membership of committees (formerly entitled "Procedure for the appointment of committees"));

(*c*) Amendments to article 14, paragraph 6 (Right to address the Conference);

(*d*) Amendments to article 25 (Order of business at the opening of each session);

(*e*) Amendments to article 72, paragraphs 1[472] and 2 (Official meetings);

(*f*) Amendments to article 75, paragraph 2 (Procedure for the nomination of members of committees by the Government group).

The International Labour Conference also adopted a Convention and a Recommendation concerning the Protection of Workers' Claims in the Event of the Insolvency of their Employer.[473]

The Committee of Experts on the Application of Conventions and Recommendations met at Geneva from 12 to 25 March 1992 and presented its report.[474]

A representation was lodged under article 24 of the ILO Constitution alleging non-observance of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) by the Czech and Slovak Federal Republic.[475]

A panel of the Fact-finding and Conciliation Commission on Freedom of Association concerning South Africa was appointed during the 250th (May-June 1991) session of the Governing Body. Its first meeting was held in Geneva in October 1991, the second in South Africa in February 1992 and the third meeting in Geneva in May 1992 at which it finalized its report.[476] That report was transmitted according to the procedure in force, through the Governing Body

(253rd session, May-June 1992), to the Economic and Social Council of the United Nations. The Economic and Social Council, in turn, on 20 July 1992, adopted a resolution noting the report and its recommendations and calling on the Government of South Africa to report on its implementation of them by 31 December 1992.[477]

The Commission of Inquiry appointed under article 26 of the ILO Constitution to examine the complaint concerning the non-observance by Côte d'Ivoire of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), met in October-November 1991 and adopted its report,[478] which was noted by the Governing Body at its 251st session (November 1991).

The Governing Body, which met at Geneva, considered and adopted the following reports of its Committee on Freedom of Association: the 281st and 282nd reports,[479] at its 252nd session (February-March 1992); the 283rd Report[480] at its 253rd session (May-June 1992); and the 284th and 285th reports[481] at its 254th session (November 1992).

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2. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

(*a*) International Regulations

Entry into force of instruments previously adopted

In the period under review, no multilateral conventions or agreements adopted under the auspices of UNESCO entered into force.

(*b*) Human Rights

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

The Committee on Conventions and Recommendtions met in private session at UNESCO headquarters from 12 to 14 May and from 22 to 23 October 1992, in order to examine communications which had been transmitted to it in accordance with Executive Board decision 104 EX/3.3.

At its first 1992 session, the Committee examined 39 communications, of which 33 were examined with a view towards their admissibility and 6 were examined on their substance. Of the 33 communications examined as to admissibility, 4 were declared admissible, 1 was declared irreceivable and 8 were struck from the list since they were considered as having been settled or did not appear to warrant further action. The examination of 30 communications was suspended. The Committee presented its report to the Executive Board at its 139th session.

At its second 1992 session, the Committee had before it 31 communications, of which 23 were examined as to their admissibility and 8 were examined on their substance. Of the 23 communications examined as to their admissibility, 2 were declared admissible, none was declared irreceivable and 3 were struck from the list since they were considered as having been settled. The examination of 28 communications was suspended. The Committee presented its report on its examination of these communications to the Executive Board at its 140th session.

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3. INTERNATIONAL CIVIL AVIATION ORGANIZATION

(a) Work programme of the Legal Committee of ICAO

During the 29th session of the Assembly, the Legal Commission had for its consideration the general work programme of the Legal Committee established by the Legal Committee at its 28th session and as amended by the Council on 17 June 1992. The Commission noted that the Council had decided to give the highest priority to the item "Consideration, with regard to global navigation satellite systems (GNSS), of the establishment of a legal framework". As a result of its deliberations, the Commission agreed that the General Work Programme of the Legal Committee should include the following items in the order of priority indicated:

(i) Consideration, with regard to global navigation satellite systems, of the establishment of a legal framework;

(ii) Action to expedite ratification of Montreal Protocols Nos. 3 and 4 of the Warsaw System;

(iii) Study of the instruments of the Warsaw System;

(iv) Liability of air traffic control agencies;

(v) Liability of air traffic control agencies;

(vi) 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.

The Assembly adopted the recommendations and decisions of the Legal Commission regarding the Work Programme of the Legal Committee. When considering the first item on the General Work Programme of the Legal Committee, the Assembly decided that there was an urgent need for the Council to clearly establish the objectives of the first item in the General Work Programme so as to enable the Legal Committee to undertake this task.

The Assembly adopted resolution A29-19: Legal aspects of the global air-ground communications.

The Assembly requested the Secretary-General to study the subject of state/civil aircraft with a view towards advising the Council as to what consequential constitutional and related legal matters might arise, as well as the associated methodology for addressing them.

The Assembly reconfirmed the importance of resolution A27-3, in particular, the necessity for States to ratify ICAO international air law instruments.

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

The Assembly decided that the Secretary-General should continue to monitor the work of the United Nations Committee on the Peaceful Uses of Outer Space.

During its 137th session, in November 1992, the Council approved the General Work Programme of the Legal Committee and requested the Secretary-General to undertake a study on the subject of state/civil aircraft.

(*b*) Other resolutions of legal significance adopted by the 27th session of the ICAO Assembly

(i) *Resolution A29-3. Global rule harmonization*

The purpose of this resolution is to promote the harmonization of national rules regarding the application of ICAO standards. While globalization in international civil aviation operation is gaining momentum, the harmonization of national rules for the application of ICAO standards is not in step. Regulations tend to differ from State to State, causing costly incompatibility problems. Harmonization of rules by States, bilaterally and multilaterally, in cooperation with ICAO, could lead to better consistency in implementation of the international standards contained in the annexes to the Chicago Convention.

(ii) *Resolution A29-5. Consolidated statement of continuing ICAO policies related to the safeguarding of international civil aviation against acts of unlawful interference*

The purpose of this resolution, which supersedes resolution A27-7, is to facilitate the implementation of all relevant Assembly resolutions on aviation security by making their texts more readily available, understandable and logically organized and to ensure that such a consolidated statement remains up to date and reflects the policies of the Organization as they exist at the end of each regular Assembly session.

(iii) *Resolution A29-6. Role of ICAO in the implementation of the Convention on the Marking of Plastic Explosives for the Purpose of Detection and of the resolution in the Final Act*

This resolution invites the 29th Assembly to endorse the decision of the Council to assume the functions assigned to it by the Convention. The functions assigned to the Council under the Convention reflect the political will of States to take advantage of the existing mechanism of ICAO, the human resources of the Secretariat and the cooperation of the Council to achieve a successful and coordinated implementation of the Convention and of the resolution. Although the Convention has not yet entered into force, these functions assigned to ICAO, which are referred to in several articles of the international instrument, provide all the elements, structure and working methods required for the implementation of the Convention when it enters into force, and of the resolution in the Final Act.

(*c*) Privileges, immunities and facilities

A new Headquarters Agreement between the International Civil Aviation Organization and the Government of Canada, signed at Calgary and Montreal on 4 and 9 October 1990, respectively, entered into force on 20 February 1992 by an exchange of notes between the Secretary of State for External Affairs of Canada and the President of the Council of ICAO. The new Headquarters Agreement supersedes the Headquarters Agreement signed on 14 April 1951.

A Tax Reimbursement Agreement between the United States of America and the International Civil Aviation Organization was signed at Montreal on 14 July and entered into force on that date.

The 29th session of the Assembly recalled resolution A26-3 and appealed once again to all Contracting States to become parties to, or to apply the principles of, the Convention on the Privileges and Immunities of the Specialized Agencies adopted by the United Nations General Assembly in November 1947.

4. WORLD HEALTH ORGANIZATION

(a) Constitutional and legal developments

During 1992, the following countries became members of the World Health Organization by deposit of an instrument of acceptance of the Constitution, as provided for in articles 4, 6 and 79(b) thereof:

Kyrgyzstan	29 April 1992
Armenia	4 May 1992
Republic of Moldova	4 May 1992
Tajikistan	4 May 1992
Slovenia	7 May 1992
Uzbekistan	22 May 1992
Georgia	26 May 1992
Croatia	11 June 1992
Turkmenistan	2 July 1992
Kazakhstan	19 August 1992
Bosnia and Herzegovina	10 September 1992
Azerbaijan	2 October 1992

At the end of 1992, there were thus 182 States members and two associate members of WHO.

The amendments to articles 24 and 25 of the Constitution,[482] adopted in 1986 by the Thirty-ninth World Health Assembly to increase membership of the Executive Board from 31 to 32, had been accepted by 90 member States as at 31 December 1992; acceptances by two thirds of the member States is required for the amendments to enter into force.

(b) Health legislation

The period was characterized by particularly intensive legislative activity at the national level in the health and environmental sectors, owing partly to major health reforms in progress in, for example, the countries of Central and Eastern Europe. Cooperation between WHO and various bodies in the Russian Federation concerned with health legislation was particularly intensive. In an innovative approach, WHO/PAHO initiated direct cooperation in the field of health legislation with the legislative assemblies of various countries in the region of the Americas; to facilitate this process, WHO/PAHO has developed model legislation in a number of priority areas and prepared comparative legislative analyses.

The cornerstone of WHO's activities at the global level in the field of information transfer remains the quarterly *International Digest of Health Legislation*. This journal, widely used by health policy-makers and public health workers at all levels, serves as the basis for intensive clearing-house activities designed to ensure that member States have access to the information they require in a user-friendly form. Indeed, the number of requests for information on legislative matters was at a higher level than in previous years. Increasingly, the materials published in the *Digest*, and the other extensive documentation available to WHO, is being made available to member States in other forms, such as computerized databases. Thus, such databases have now been established in such priority subjects as HIV/AIDS legislation, "tobacco or health" legislation and

organ transplantation legislation. In the region of the Americas, the LEYES database, containing an Index to Latin American and Caribbean health legislation, continues to be produced by PAHO and is now available in compact-disc form (LILACS-CD-ROM). A computerized listing of health legislation enacted or issued in Europe during the period 1990-1991 was issued in 1992 by the Regional Office for Europe.

Technical support to countries in the field of health legislation took diverse forms in the different regions. Thus, WHO provided support to India in a project to review existing public health laws, and suggestions were made for a comprehensive and unified approach to health legislation, for enforcement on a national basis. A number of workshops were organized, with WHO input, in different parts of the country, with a view to identifying the various aspects of health to be incorporated into existing legislation. Support was given to Thailand in reviewing draft legislation on AIDS. The Regional Office for Africa received an unprecedented number of requests for cooperation in the development of health legislation. Furthermore, that office undertook an evaluation designed to measure the impact of health legislation at the national, district, and community levels. The Regional Office for the Eastern Mediterranean is working closely with member States in that region to develop an appropriate health legislation framework, based on precise legal standards; such a framework is perceived to be an essential prerequisite for the effective and efficient utilization of health resources.

WHO continued to actively monitor and report on all significant international, national, and subnational legal instruments dealing with HIV/AIDS and was closely involved in a number of conferences and meetings at which the legal, human rights and ethical aspects of AIDS were on the agenda. It also continued to monitor laws, codes and other measures for the implementation of the International Code of Marketing of Breast-milk Substitutes. A number of workshops were convened to discuss some of the legal and policy issues involved in the implementation of the Code at the national level, and direct assistance was given to a number of countries in the development of implementing legislation.

WHO was actively involved in the preparations for the World Conference on Human Rights, to be held in Vienna from 14 to 25 June 1993. It was also involved in the preparation of a series of position papers for the Conference, and also commissioned a major report entitled *Human Rights in Relation to Women's Health*. As far as possible, WHO has been represented at meetings by the United Nations on human rights issues, and there has been close cooperation with the United Nations Centre for Human Rights. Similarly, close working relations have been maintained with other agencies and bodies, inside and outside the United Nations system, with an interest in legislative matters.

The WHO Regional Office for the Americas, operating through the Pan American Sanitary Bureau,[483] also hosted and was actively involved in several workshops and conferences dealing with different aspects of bioethics. These included the Workshop on the Ethical and Legal Aspects of AIDS in the Andean Region, 10-12 March 1992, the Iberoamerican Intensive Course on Bioethics at the Kennedy Institute of Ethics, 24-30 May 1992, and the Third International Conference on Health Law and Ethics, held at Toronto, 1992.

5. WORLD BANK

(a) IBRD, IFC AND IDA: membership

During 1992, the following 16 countries became members of the International Bank for Reconstruction and Development: Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Marshall Islands, Moldova, Russian Federation, Switzerland, Turkmenistan, Ukraine and Uzbekistan. During the same period, Belarus, the Comoros, Equatorial Guinea, the Lao People's Democratic Republic, the Marshall Islands and Switzerland became members of the International Finance Corporation, and Kazakhstan, Kyrgyzstan, Latvia, Portugal, the Russian Federation, Switzerland and Uzbekistan became members of the International Development Association. On 31 December 1992, membership in IBRD, IFC and IDA stood at 172, 149 and 147, respectively.

(b) Legal framework for the treatment of foreign investment

In April 1991, the Development Committee, which is a Joint Ministerial Committee of the Boards of Governors of the International Monetary Fund and the World Bank, requested the Multilateral Investment Guarantee Agency (MIGA) to prepare a "legal framework" to promote foreign direct investment. Realizing that this was a matter of interest to all World Bank Group institutions, the President of these institutions assigned the project to a small working group consisting of their General Counsel.

The approach followed by the task force was described in a progress report submitted to the April 1992 meeting of the Development Committee and published in volume I of the *Legal Framework for the Treatment of Foreign Investment*. The report explained that the World Bank Group could not issue binding rules to govern the conduct of member States in this or other fields. A draft convention could of course have been prepared and opened for signature by interested countries. The working group however found it more advisable at the current stage to prepare a set of *guidelines* embodying commendable approaches which would not be legally binding as such but which could greatly influence the development of international law in this area in view of their preparation by organizations of universal membership after broad consultations and their eventual issuance by no less an authority than the Development Committee.

First drafts of the guidelines and of their accompanying explanatory report were circulated to the Executive Directors of the World Bank, IFC and MIGA in May 1992. Extensive consultations followed with the Executive Directors, as well as with other representatives of interested member countries, intergovernmental organizations, business groups and international legal associations. In the consultations, it became clear that certain clarifications and modifications were necessary or desirable. These were incorporated into the text but did not fundamentally change its basic balance.

The resulting guidelines cover each of the four main areas usually dealt with in investment treaties, namely the admission, treatment, and expropriation of foreign investments and the settlement of disputes between Governments and foreign investors. Although they are based on general trends distilled from detailed surveys of existing legal instruments (published in volume I of the *Legal Framework for the Treatment of Foreign Investment*), the guidelines are formulated in such a manner as also to incorporate policies that the World Bank Group

institutions have been advocating in recent years. This approach, aimed at progressively developing rather than merely codifying applicable rules in the field, has made possible the formulation of progressive standards which are open, fair and consistent both with emerging rules of customary international law and with commendable practices identified by the World Bank Group.

The guidelines and accompanying report were submitted to the Development Committee for consideration at its September 1992 meeting. The Committee reviewed the guidelines with interest and called them to the attention of member countries. In so doing, the Committee noted, in the words of the communiqué of its meeting, that the guidelines should "serve as an important step in the progressive development of international practice in this area."

(c) Multilateral Investment Guarantee Agency (MIGA)

Signatories and members

The Convention Establishing the Multilateral Investment Guarantee Agency (the "Convention") was opened for signature to member countries of the World Bank and Switzerland in October 1985. As of 31 December 1992, the Convention has been signed by 137 countries. During 1992, requirements for membership were completed by the following: Argentina, Azerbaijan, Belarus, Belgium, Belize, Bulgaria, Estonia, Georgia, Gambia, Honduras, Israel, Mali, Mauritania, Morocco, Nicaragua, Paraguay, Romania, Russian Federation, Seychelles, Trinidad and Tobago, Uganda, United Republic of Tanzania and Zimbabwe.

By resolution No. 40 of the MIGA Council of Governors, adopted on 24 September 1992, schedule A to the Convention was amended by reclassifying Greece from a Category Two to a Category One country. Greece became the second country to be reclassified (Spain was reclassified as a Category One country in 1988).

Guarantee operations

MIGA guarantees or insures foreign investments in developing countries against the following non-commercial risks: expropriation, inconvertibility or impossibility of transfer of local currency, war and civil disturbance, and breach of contract. As of 31 December 1992, the Agency had insured or reinsured 45 projects that facilitated almost US$ 3 billion in total investments. MIGA's aggregate contingent liability for these investments is approximately $600 million. During 1992, investors holding MIGA guarantees came from: Canada, Denmark, France, Germany, Japan, Luxembourg, Netherlands, Norway, Saudi Arabia, United Kingdom and United States. In the same year, host countries of covered investments were: Argentina, Bangladesh, Chile, China, Czech and Slovak Federal Republic, El Salvador, Ghana, Guyana, Indonesia, Jamaica, Madagascar, Pakistan, Poland, Turkey, Uganda and United Republic of Tanzania.

Host country investment agreements between MIGA and its member States

In accordance with the directives of article 23(b)(ii) of the Convention, the Agency concludes bilateral investment agreements with developing member countries to ensure that MIGA is afforded treatment no less favourable than that accorded by the member country concerned to any State or other public entity in an investment protection treaty or any other agreement relating to foreign investment with respect to the rights to which MIGA may succeed as subrogee of

a compensated guarantee holder. As of 31 December 1992, MIGA had concluded a total of 28 such agreements; in 1992, the Agency concluded agreements with the following 15 countries: Albania, Azerbaijan, Bulgaria, Czech and Slovak Federal Republic, El Salvador, Estonia, Indonesia, Israel, Jamaica, Nigeria, Romania, Sri Lanka, Uganda and Zambia.

In accordance with the directives of article 18(c) of the Convention, the Agency also negotiates agreements on the use of local currency. These agreements enable MIGA to dispose freely of local currency acquired by it as a result of subrogation arising from a claim paid by the Agency. As of 31 December 1992, MIGA had concluded a total of 34 such agreements; and in 1992, the Agency concluded agreements with the following 16 countries: Albania, Argentina, Azerbaijan, Bulgaria, Czech and Slovak Federal Republic, El Salvador, Estonia, Indonesia, Israel, Jamaica, Nigeria, Romania, Sri Lanka, Uganda and Zambia.

Article 15 of the Convention requires that before issuing a guarantee MIGA must obtain the approval of the host member country in which the investment is contemplated. In order to expedite the process, MIGA negotiates arrangements with host country Governments that provide a degree of automaticity in the approval procedure. As of 31 December 1992, MIGA had concluded a total of 38 such agreements; and in 1992, the Agency concluded agreements with the following 19 countries: Albania, Azerbaijan, Bahamas, Bulgaria, Czech and Slovak Federal Republic, El Salvador, Estonia, Israel, Jamaica, Kazakhstan, Kyrgyzstan, Lithuania, Morocco, Nigeria, Peru, Romania, Sri Lanka and Zambia.[484]

(d) International Centre for Settlement of Investment Disputes

Signatures and ratifications

During 1992, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention)[485] was signed by 12 countries: Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Lithuania, Moldova, Russia, Turkmenistan, United Republic of Tanzania and Uruguay. Eight of them — Armenia, Azerbaijan, Belarus, Estonia, Georgia, Lithuania, Turkmenistan and United Republic of Tanzania — also ratified the ICSID Convention in the couse of the year. With these new signatures and ratifications, the number of signatory States and Contracting States reached 121 and 105 respectively.

Disputes before the Centre

During 1992, arbitration proceedings were instituted in two new cases, *Vacuum Salt Products Ltd. v. Government of the Republic of Ghana* (case ARB/92/1) and *Scimitar Exploration Limited v. Bangladesh and Bangladesh Oil, Gas and Mineral Corporation* (case ARB/92/2).

In May 1992, an Award was rendered in *SPP (ME) v. Arab Republic of Egypt* (case ARB/84/3). In June 1992, an ad hoc Committee was constituted under article 52 of the ICSID Convention to consider an application for annulment of that Award.

In December 1992, a Decision was rendered by the ad hoc Committee in *Amco Asia Corporation et al. v. Republic of Indonesia* (case ARB/87/3). The Decision rejected the parties' application for annulment of the Award of 5 June

1990 and annulled the 17 October 1990 Decision on Supplemental Decisions and Rectification of the Award.

As of 31 December 1992, two other cases were pending before the Centre: *Société d'Etudes de Travaux et de Gestion S.A. - SETIMEG v. Republic of Gabon* (case ARB/87/1) and *Manufacturers Hanover Trust Company v. Arab Republic of Egypt and the General Authority for Investment and the Free Zones* (case ARB/89/1).

Consents to ICSID arbitration in investment treaties

Bilateral investment treaties frequently contain provisions setting forth the consent of each State party to the treaty to submit to arbitration under the ICSID convention or the ICSID Additional Facility Rules[486] disputes with investors from the other State party to the treaty. In the course of 1992, the number of bilateral investment treaties with such provisions surpassed 150. Also during 1992, there was concluded the first multilateral treaty with provisions of this type, the North American Free Trade Agreement (NAFTA), signed by Canada, Mexico and the United States of America in December 1992. The provisions of its Investment chapter, on the "Settlement of disputes between party and an investor of another party," provide for the resolution of such disputes by arbitration under the ICSID Convention or under the ICSID Additional Facility Rules or under the UNCITRAL Arbitration Rules,[487] with the Secretary-General of ICSID acting as the appointing authority of arbitrators.

6. INTERNATIONAL MONETARY FUND

MEMBERSHIP ISSUES

(i) *Succession to membership*

On 14 December 1992, the Fund determined that the former Socialist Federal Republic of Yugoslavia had ceased to exist, and therefore ceased to be a member of the Fund. At the same time, the Fund decided that the Republic of Bosnia and Herzegovina, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Slovenia and the Federal Republic of Yugoslavia (Serbia and Montenegro) were the successors to the assets and liabilities of the former Socialist Federal Republic of Yugoslavia in the Fund and, subject to specified conditions, might succeed to its membership in the Fund. The Republic of Croatia, the former Yugoslav Republic of Macedonia and the Republic of Slovenia succeeded to Fund membership with effect from 14 December 1992 with a quota of SDR 180.1 million, SDR 33.5 million and SDR 99 million, respectively.

The Fund also considered in December 1992 the status of the Czech and Slovak Federal Republic in the Fund and determined that it would cease to exist, and therefore would cease to be a member of the Fund, as of 1 January 1993. At the same time, the Fund decided that the Czech Republic and the Slovak Republic shall be the successors to the assets and liabilities of the Czech and Slovak Federal Republic in the Fund and may, subject to specified conditions, succeed to its membership in the Fund with a quota of SDR 589.6 million and SDR 257.4 million, respectively. The Czech Republic and the Slovak Republic succeeded to Fund membership with effect from 1 January 1993.

(ii) *Accession to membership*

During the course of 1992, the following countries acceded to membership in the Fund, with the following quotas:[488]

Member	*Date*	*Quota*
Lithuania	29 April 1992	SDR 69 million
Georgia	5 May 1992	SDR 74 million
Kyrgyzstan	8 May 1992	SDR 43 million
Latvia	19 May 1992	SDR 61 million
Marshall Islands	21 May 1992	SDR 1. 5 million
Estonia	26 May 1992	SDR 31 million
Armenia	28 May 1992	SDR 45 million
Switzerland	29 May 1992	SDR 1,700 million
Russian Federation	1 June 1992	SDR 2,876 million
Belarus	10 July 1992	SDR 187 million
Kazakhstan	15 July 1992	SDR 165 million
Republic of Moldova	12 August 1992	SDR 60 million
Ukraine	3 September 1992	SDR 665 million
Azerbaijan	18 September 1992	SDR 78 million
Uzbekistan	21 September 1992	SDR 133 million
Turkmenistan	22 September 1992	SDR 32 million
San Marino	23 September 1992	SDR 6.5 million

Total Fund membership as of 31 December 1992 stood at 177 members.

REPRESENTATION OF MEMBER COUNTRIES

At the 1992 annual meetings, the Chairman of the Board of Governors, following the recommendations of the Joint Procedures Committee, took a series of decisions concerning the representation of Haiti, Somalia and Yugoslavia in the Fund. With respect to Haiti, the Chairman decided to accept the credentials of the delegation appointed by the government-in-exile of President Jean-Bertrand Aristide, thus denying the credentials of the delegation appointed by the government in Port-au-Prince that was in effective control of the territory and administration of the member. In the case of Somalia, the Chairman decided to leave the seat of Somalia unfilled. Finally, for Yugoslavia, the Chairman denied the credentials of the delegation from the Federal Republic of Yugoslavia (Serbia and Montenegro), and the seat of Yugoslavia was left unfilled for the annual meetings.

In the light of those decisions, the Executive Board on 30 October 1992 endorsed a series of proposals concerning the Fund's relations with the above three members. With respect to Haiti, the Board decided that the Governor appointed by the Government of President Aristide would continue to be accepted as Governor of the Fund and that that Government would be asked to perform, on behalf of Haiti, all obligations of membership. With respect to Somalia and Yugoslavia, the Board found that there were at that time no Governors for these members but that the designation of their respective fiscal agents and depositories would remain effective. The Fund would therefore continue to deal with those fiscal agents and depositories.

Third amendment of the Fund's Articles of Agreement

The third amendment of the Articles of Agreement of the Fund[489] entered into force on 11 November 1992, the date on which the Fund certified to its members that it had been accepted by three fifths of the Fund's members having 85 per cent of the total voting power. This amendment empowers the Fund to suspend the voting and certain related rights of a member that persists in its failure to fulfil any of its obligations under the Articles other than obligations with respect to SDRs. Suspension may be imposed by a decision of the Executive Board with a 70 per cent majority of the total voting power.

Ninth General Review of Quotas

An increase in the total of the quotas of Fund members was authorized by the Board of Governors in 1990 and proposed to those countries that were Fund members on 30 May 1990. The resolution of the Board of Governors provides that no increase in quotas shall become effective before members having not less than 85 per cent of the total of quotas on 30 May 1990 have consented to the increases in their quotas during the period ending 30 December 1991, or after 30 December 1991, members having not less than 70 per cent of the total of quotas on 30 May 1990 have consented to the increases in their quotas. The resolution of the Board of Governors also specifies that no quota increase shall come into effect before the effective date of the third amendment of the Fund's Articles. On 11 November 1992, the Executive Board determined that the above requirements had been fulfilled. The total level of Fund quotas was SDR 141.992.3 million as of 18 December 1992.

Under the resolution adopted effective 28 June 1990, each member must consent to its increase in quota by 31 December 1991 and pay to the Fund the increase in its quota within 30 days after its consent or the date on which the requirements set forth in the above paragraph were satisfied, whichever was later, provided that the Executive Board was given the authority to extend both the consent and payment periods as it might determine. Following three previous extensions to 30 June, 30 September and 30 November 1992, respectively, the Executive Board extended, on 30 November 1992, the period of consent to the increases in quotas from that date to 31 May 1993. It also extended the original 30-day payment period by 45 days.

Termination of enlarged access policy and establishment of new access limits

The quota increases under the Ninth General Review enable the Fund to make its resources available to its members without the need for borrowing. Accordingly, the enlarged access policy under which the Fund had since 1981 borrowed from official sources to supplement its own resources and to finance members' purchases, was terminated with the effectiveness of the quota increases under the Ninth General Review. Access limits in relation to the new quotas were established and became effective when the quota increases under the Ninth General Review became effective on 11 November 1992. Under the new limits, members may have an access to the Fund's general resources under the credit tranches and the extended fund facility up to an annual limit of 68 per cent of quota and a cumulative limit of 300 per cent of quota, net of scheduled repurchases.

Members with overdue financial obligations — levying of special charges discontinued

In order to assist members in protracted arrears to the Fund, the Board has in recent years modified the system of special charges on overdue financial obligations to the Fund. At its review of the system of special charges in April 1992, the Executive Board concluded that, in the cases of members in protracted arrears, the application of special charges could have the effect of compounding the severity of the arrears problem and complicating the efforts by all parties to arrive at a solution. The Board therefore decided to discontinue levying special charges in the General Resources Account on all members with overdue obligations outstanding for six months or more with effect from 1 May 1992.

Debt and debt-service reduction operations — amendment

In June 1992, the Fund amended the original decision on Fund support for debt and debt-service reductions operations, adopted on 19 December 1989, in order to allow the use of additional resources for collateralization of principal in reduced interest par bond exchanges. Previously, Fund resources were not available for this purpose. Under the decision, as amended in June 1992, set-aside resources are to be used in support operations involving principal reduction, while additional resources are to be used for interest support for debt and debt-service reduction operations or for collateralization of principal in reduced interest par bond exchanges.

Enhanced Structural Adjustment Facility (ESAF) — amendments

In April 1992, the Fund expanded eligibility to use the ESAF Trust to 11 more members: Albania, Angola, Côte d'Ivoire, Dominican Republic, Egypt, Honduras, Mongolia, Nicaragua, Nigeria, Philippines and Zimbabwe. All these countries share characteristics, such as low per capita incomes, high debt burdens and protracted balance of payments difficulties, with those members already eligible to borrow under ESAF. Access under ESAF for newly eligible members is expected to be lower than access for the other eligible members because the newly eligible members have agreed to rely exclusively on ESAF Trust Resources. By contrast, the other eligible members continue to have access to SAF resources to fund their ESAF arrangements.

In July 1992, the Fund extended the commitment period for ESAF Trust loans to the end of November 1993.

Rate of charge on the use of Fund resources — Unification

In December 1992, the Executive Board concluded that the distinction between the use of ordinary and borrowed resources was no longer relevant for purposes of setting the rate of charge, and decided to simplify the Fund's schedule of charges by adopting effective 1 May 1993 a single unified rate of charge that would apply to all outstanding uses of Fund resources.

General arrangements to borrow

Established in 1962, the General Arrangements to Borrow (GAB) permit the Fund to borrow, in certain circumstances, from 11 industrial countries (including Switzerland, which was not a member of the Fund in 1962). In October 1992, the Executive Board renewed the GAB for a period of five years from 26 December 1993 and approved an amendment to the GAB to reflect Switzerland's membership in the Fund. The amendment of the GAB entered into effect

on 22 December 1992, following concurrence by all participants in the GAB. The borrowing agreement between Saudi Arabia and the Fund in association with the GAB was also renewed in December 1992 for a period of five years from 26 December 1993.

MODIFICATION OF ARTICLE IV CONSULTATION CYCLES

Consultations with members of the Fund are provided for by Article IV of the Fund's Articles of Agreement. Through them, the Fund fulfils its obligations to exercise surveillance over the exchange rate policies of its members.

In principle, consultations are held annually. However, as described in the relevant section of the 1991 *United Nations Juridical Yearbook*, the schedule of Article IV consultations for certain categories of members was changed temporarily in November 1991. Certain members were shifted from the annual consultation cycle to the bicyclic procedure, while most members formerly on the bicyclic procedure were shifted to a cycle in which consultations take place every 24 months. Normal consultation cycles were restored in November 1992 when the Board reviewed and terminated the above temporary schedule of consultation cycles.

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 the making of payments and transfers for current international transactions. Members of the Fund accepting the obligations of Article VIII undertake to refrain from imposing restrictions on the making of payments and transfers for current international transactions or engaging in multiple currency practices without the Fund's approval. During 1992, four members, namely, Greece, the Marshall Islands, Switzerland and San Marino accepted the obligations of Article VIII, Sections 2, 3 and 4, raising to 74 the number of members that have accepted these obligations (as of 31 December 1992). The other countries that have joined the Fund in 1992 are availing themselves of the transitional arrangements of Article XIV.

JOINT VIENNA INSTITUTE

In September 1992, the Joint Vienna Institute (JVI), a cooperative venture of the Fund and other international organizations to train officials and private sector managers from former centrally planned economies, commenced operations under interim legal arrangements.

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7. INTERNATIONAL MARITIME ORGANIZATION

(a) Membership of the Organization

The following countries became members of the International Maritime Organization: Estonia (31 January 1992) and Croatia (8 July 1992). Through the dissolution of Czechoslovakia the membership of the Organization was reduced by one State. As at 31 December 1992, the number of members of IMO was therefore 136. There are also two associate members.

(b) Liability for damage caused by hazardous and noxious substances

During 1992, the Legal Committee continued its consideration of a draft international convention on liability and compensation for damage in connection with the carriage of hazardous and noxious goods by sea (HNS convention), as a priority subject. The Working Group of Technical Experts continued to meet during the sessions of the Legal Committee and to provide advice to the Committee on technical matters.

The Committee based its consideration of the subject on previous assumptions that the system should provide for strict liability of the shipowner, supplemented by a second tier financed by cargo interests, and that the shipowner's liability should be covered by compulsory insurance. Another assumption which was maintained was that the convention should apply also to packaged goods.

One major question which occupied much of the discussion was to what extent goods carried in packaged form should contribute to the second tier. A working hypothesis was that only what was referred to as "bulk plus" should give rise to such contributions, i.e. goods carried in bulk plus large quantities of goods carried in containers or under similar transport arrangements. In particular the Working Group of Technical Experts concentrated on this delimitation of contributing cargo.

The Working Group further studied whether the hazardous nature of the goods and other characteristics should be taken into account for determining the extent to which a certain substance would be required to contribute to the second tier. Another question which received particular attention was whether the convention should cover damage caused by bunker fuel oils. Tentatively the Committee decided that this should not be the case.

The Committee also addressed the issue of whether to make distinctions between certain categories of substances (goods). These discussions were initiated by a number of contributions which drew attention to the carriage of liquefied natural gas (LNG) and argued in favour of making particular arrangements in respect of such carriage. As stated in several submissions, it would also be justified to introduce a separate system for collecting contributions from oil. These issues were discussed in detail at the sixty-eighth session of the Committee.

The time which has in the past been devoted to the preparation of an HNS convention illustrates that this is an extremely complex and complicated issue. Work on the convention would therefore continue on a priority basis also in 1993.

(c) Follow-up work in connection with the Basel Convention

The Legal Committee noted that the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal[490] had entered into force on 5 May 1992 and that the first meeting of the Conference of the Parties to the Convention to be held in November 1992 would consider, in addition to the elements of the protocol on liability and compensation, a proposal of the Executive Director of UNEP to establish a compensation fund to serve as a second or third tier. The Executive Director would also submit a draft proposal for the establishment of an emergency fund.

The IMO Secretariat was requested to continue to cooperate with the Secretariat of the Basel Convention with a view to avoiding any overlapping between the HNS convention and the regimes proposed by the Executive Director.

(*d*) Consideration of draft protocols with amendments to the Intergovernmental Oil Pollution Liability and Compensation System based on the 1969 Civil Liability Convention and the 1971 Fund Convention and related issues

The Legal Committee considered and approved the text of the draft protocols with amendments to the 1969 Civil Liability Convention[491] and the 1971 Fund Convention[492] for submission to the diplomatic conference to be convened from 23 to 27 November 1992.

The Committee also approved the texts of two draft conference resolutions and decided to transmit them to the diplomatic conference for further consideration.

Finally, the Committee approved the submission to the diplomatic conference of draft provisions on a system of setting a cap on contributions payable by oil receivers in any given State for a transitional period.

(*e*) Consideration of the application of the 1969 Civil Liability Convention in cases of bareboat charter

The Legal Committee considered the interpretation to be given to article VII (2) of the 1969 Civil Liability Convention in cases of bareboat chartered ships temporarily registered in the register of the bareboat charterers. The Committee requested the Secretary-General to invite the Comité Maritime International to undertake a study of the actual practice in the implementation of article VII (2) in States which allowed bareboat charter registration. The Committee decided to consider the matter further in the light of the information and conclusions of the study.

(*f*) Technical cooperation subprogramme for maritime legislation

In line with the recommendations of an Advisory Meeting on Technical Cooperation convened by the Secretary-General, the Legal Committee considered questions related to the establishment of a technical cooperation subprogramme in the field of maritime legislation.

As a result of these deliberations, the Committee adopted a technical cooperation subprogramme for maritime legislation. At the same time the Committee recognized that the subprogramme was an ongoing issue and that the programme would have to be updated continuously and for this purpose encouraged further feedback from developing countries.

(*g*) Wreck removal and related issues

The Legal Committee noted information provided by the Secretariat on the issue of disused or abandoned offshore installations and structures in the continental shelf and in the exclusive economic zone which presented a danger to navigation. It also noted a draft Assembly resolution on IMO guidelines on the safety of towed ships and other floating objects including installations, structures and platforms at sea.

The Committee decided that the inclusion of the subject "wreck removal and related issues" in the work programme for 1993 would be considered later in more detail on the basis of an expected submission by a Member State.

(h) Legal issues regarding mandatory ship reporting systems and vessel traffic services (VTS)

At the request of the Maritime Safety Committee, the Legal Committee addressed various legal issues regarding the introduction of mandatory ship reporting and vessel traffic services (VTS). Several provisions of the 1982 United Nations Convention on the Law of the Sea and IMO treaty and non-treaty instruments were analyzed in this regard. Discussions in the Committee showed that there was no consensus as to whether an existing treaty instrument could provide the necessary legal basis for the establishment of mandatory VTS. The Committee decided to continue a detailed consideration of the legal aspects involved in mandatory ship reporting at its next session. At the same time, the Maritime Safety Committee was encouraged to continue its consideration of the technical aspects involved, while the legal aspects were analysed by the Legal Committee. The Committee was assisted in its deliberations by a representative of the Division for Ocean Affairs and the Law of the Sea of the United Nations.

(i) Changes in the status of IMO conventions

(1) *Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, and Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971*

On 27 November 1992, a one-week international conference convened by IMO adopted the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, and the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (Fund Convention).

The instruments were opened for signature at IMO headquarters on 15 January 1993 and will remain open until 14 January 1994. Fifty-five States and one associate member of IMO participated in the Conference. The Conference was also attended by observers from two intergovernmental and 10 non-governmental organizations in official relationship with IMO.

The new Protocols incorporate the substantive provisions of two Protocols which were adopted in 1984 but contain different entry into force provisions. The 1992 Protocol to the 1969 Civil Liability Convention will enter into force 12 months after the date on which 10 States, including 4 States each with not less than 1 million units of gross tanker tonnage, have become parties to it. The required number of states each with not less than 1 million units gross tanker tonnage has been reduced from six in the 1984 Protocol to four in the 1992 Protocol.

The 1992 Protocol to the 1971 Fund Convention will enter into force 12 months after the date on which eight States have become parties to it, provided that the total quantity of contributing oil received by them during the preceding calendar year is at least 450 million tons. The figure in the 1984 Protocols was 600 million tons. The newer Protocol introduces a system of "capping" of contributions to the Fund. The capping puts a limit to the amount paid in respect of contributing oil received in a single contracting State during a particular calen-

dar year. The limit, 27.5 per cent, will be applied during the first five years after entry into force or until the total quantity of contributing oil received by the contracting Parties in a calendar year has reached 750 million tons.

The Conference also adopted five resolutions, mainly on the capping system and treaty law issues.

(2) *1992 amendments to the International Convention for the Safety of Life at Sea (SULAS) 1974,*[493] *as amended*[494]

(*a*) The Maritime Safety Committee at its sixtieth session (April 1992) adopted by resolutions MSC.24(60) and MSC.26(60) amendments to chapters II-2 and II-1 of the Convention.

In accordance with the tacit amendment procedure provided for in article VIII(b) (vii) (2) of the Convention, that the amendments shall enter into force on 1 October 1994 unless, prior to 1 April 1994, more than one third of the Contracting Governments to the Convention, or Contracting Governments the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments.

(*b*) By resolution MSC.27(61), the Maritime Safety Committee at its sixty-first session (December 1992) adopted further amendments to the Convention with entry into force provisions as under (i) above.

At the same session, the Maritime Safety Committee also adopted by resolution MSC.28(61) amendments to the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code) and by resolution MSC.30(61) amendments to the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code).

The Committee determined in accordance with the tacit amendment procedure referred to above that the amendments shall enter into force on 1 July 1994 unless provided that the amendments are deemed to have been accepted on 1 January 1994.

(3) *1992 amendments to the International Convention for the Prevention of Pollution from ships, 1973,*[495] *as modified by the Protocol of 1978 relating thereto*[496] *(MARPOL 73/78)*

(*a*) The Marine Environment Protection Committee at its thirty-second session (March 1992) adopted by resolution MEPC.51(32), amendments to annex I to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (discharge criteria of annex I of MARPOL 73/78).

At the same session, the Marine Environment Protection Committee adopted by resolution MEPC.53(32) other amendments to annex I of the Protocol of 1978 relating to the International Convention for the Prevention of Marine Pollution from Ships, 1973 (new regulations 13F and 13G on the design and construction of oil tankers and related amendments to annex I of MARPOL 73/78).

The Committee determined, in accordance with article 16(2) (f) (iii) and (g) (ii) of the 1973 Convention, that the amendments shall be deemed to have been accepted on 6 January 1993 and will enter into force on 6 July 1993 unless prior to the former date one third or more of the Parties or the Parties the combined merchant fleets of which constitute 50 per cent or more of the gross

tonnage of the world's merchant fleet, have communicated to the Organization their objections to the amendments.

(*b*) The Marine Environment Protection Committee at its thirty-third session (October 1992) adopted by resolution MEPC.55(33) amendments to the International Code for Communication and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code) and by resolution MEPC.56(33) amendments to the Code for Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (BCH Code).

At the same session, the Marine Environment Protection Committee also adopted by resolution MEPC.57(33) amendments to annex II to MARPOL 73/78 (designation of the Antarctic Area as a special area and lists of liquid substances in annex II) and by resolution MEPC.58(33) amendments to annex III to MARPOL 73/78 (revised annex II).

The dates for deemed acceptance and entry into force determined by the Committee were, for the amendments adopted by resolutions MEPC.55(33), MEPC.56/33 and 57(33), 1 January 1994 and 1 July 1994 respectively, and for the amendments adopted by resolution MEPC.58(33) 30 August 1993 and 28 February 1994 respectively.

(4) *1992 amendments to the Convention on Facilitation of International Maritime Traffic, 1965*[497]

The Facilitation Committee at its twenty-first session (May 1992) adopted by resolution FAL.3(21) a number of amendments to the annex to the Convention on Facilitation of International Maritime Traffic, 1965.

The Committee determined, in accordance with article VII(2)(b) of the Convention, that the amendments shall enter into force on 1 September 1993 unless, prior to 1 June 1993, at least one third of the contracting Governments to the Convention have notified the Secretary-General in writing that they do not accept the amendments.

(5) *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988*[498]

The conditions for the entry into force of this Convention were met on 2 December 1991 with the deposit of an instrument of approval by France. In accordance with article 18, the Convention entered into force on 1 March 1992.

(6) *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988*[499]

With the entry into force of the Convention referred to above, the conditions for the entry into force of this Protocol were met. In accordance with article 6, the Protocol entered into force on 1 March 1992.

(7) *Annex III to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, as amended*[496]

The conditions for the entry into force of optional annex III to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, as amended, were met on 1 July 1991. The annex entered into force on 1 July 1992 for States Parties to MARPOL 73/78 which have accepted that annex, in accordance with article 15(2) of the Convention.

(8) *1988 amendments (GMDSS) to the International Convention for the Safety of Life at Sea (SOLAS), 1974,*[500] as amended[501]

A Conference of Contracting Governments to the Convention, convened in accordance with article VIII of the Convention and held at London in October/November 1988, adopted amendments to the Convention concerning Radiocommunications for the Global Maritime Distress and Safety System. The conditions for the entry into force of the amendments were met on 1 February 1990, and the amendments entered into force on 1 February 1992, as determined by the parties to the Convention.

(9) *1989 amendments (April) to the International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended*

The Maritime Safety Committee at its fifty-seventh session (April 1989) adopted by resolution MSC.13(57) amendments to chapters II-1, II-2, III, IV, V and VII of the Convention. The conditions for their entry into force were met on 31 July 1991 and the amendments entered into force on 1 February 1992 in accordance with the terms of the resolution.

(10) *1990 amendments to the International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended*

The Maritime Safety Committee at its fifty-eighth session (May 1990) adopted by resolution MSC.19(58) amendments to chapter II-1 of the Convention. The conditions for their entry into force were met on 31 July 1991 and the amendments entered into force on 1 February 1992, in accordance with the terms of the resolution.

(11) *1990 amendments to annexes I and V to the International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978 relating thereto (MARPOL 73/78)*

These amendments were adopted by the Marine Environment Protection Committee at its thirtieth session (November 1990) by resolution MEPC.42(30). The conditions for their entry into force were met on 16 September 1991 and the amendments entered into force on 17 March 1992, in accordance with the terms of the resolution.

(12) *1991 amendments to annexes I and II to the International Convention for Safe Containers, 1972, as amended (CSC 1972)*[502]

The Maritime Safety Committee at its fifty-ninth session (May 1991) adopted by resolution MSC.20(59) amendments to annexes I and II to the Convention. The conditions for their entry into force were met on 1 January 1992 and the amendments entered into force on 1 January 1993, in accordance with the terms of the resolution.

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8. WORLD INTELLECTUAL PROPERTY ORGANIZATION

The year 1992 was the twenty-fifth year after the establishment of the WIPO Convention in 1967. To mark the occasion, a special publication was issued, entitled *The First Twenty-Five Years of the World Intellectual Property Organization*. It contains an essay by the Director General which gives an ex-

haustive survey of the developments and accomplishments of the Organization in the past 25 years.

(a) The Convention establishing WIPO[503] and the treaties administered by WIPO

On 31 December 1992, the membership of WIPO increased to 131 with the accessions to, or declarations of continued application of, the Convention Establishing the World Intellectual Property Organization by Albania, Croatia, Lithuania and Slovenia.

In addition, in the course of 1992, the number of States party to the treaties administered by WIPO increased with the adherences or declarations of continued application of the following countries to the following treaties.

(i) Croatia, The Gambia, Slovenia and Ukraine to the Paris Convention on the Protection of Industrial Property,[504] bringing the number of States parties to 106;

(ii) China, Croatia, The Gambia, Paraguay, Slovenia and Zambia to the Bern Convention for the Protection of Literary and Artistic Works,[505] bringing the number of States parties to 95;

(iii) Croatia, Slovenia and Ukraine to the Madrid Agreement Concerning the International Registration of Marks,[506] bringing the total number of the States parties to 32;

(iv) the Democratic People's Republic of Korea and Romania to the Hague Agreement concerning the International Deposit of Industrial Designs,[507] bringing the number of States parties to 21;

(v) Croatia and Slovenia to the Nice Agreement concerning the International Classification of Goods and Services for the purposes of the Registration of Marks,[508] bringing the number of States parties to 35;

(vi) Croatia and Slovenia to the Locarno Agreement Establishing an International Classification for Industrial Designs,[509] bringing the number of States parties to 18;

(vii) Ireland, New Zealand, Niger, Portugal and Ukraine to the Patent Cooperation Treaty CPCT,[510] bringing the number of States parties to the PCT Union to 54;

(viii) Argentina and Australia to the International Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms,[511] bringing the number of States parties to 37;

(ix) Slovenia to the Convention relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite,[512] bringing the number of States parties to 15;

(x) Argentina to the Treaty on the International Registration of Audiovisual Works,[513] bringing the number of States parties to six.

(b) Development cooperation activities in the legal field

For WIPO, the year 1992 was marked by a consistent level of demand for assistance from the developing countries. WIPO's training activities are meant to provide or enhance professional skills and competence for the effective administration and use of the intellectual property system. During the year, training was given to government officials and personnel from the technical, legal,

industrial and commercial sectors in the form of courses, study visits, workshops, seminars, training attachments abroad and on-the-job training by international experts.

A condition for ensuring optimum benefits from a country's use of the intellectual property system is the existence of appropriate national legislation. WIPO continued in 1992 to place emphasis on the advice and assistance that it gives to developing countries in the improvement of their legislation. WIPO prepared draft laws and regulations which, depending upon the country concerned, dealt with one or more aspects of intellectual property, or WIPO commented on drafts prepared by the Governments of the countries themselves. During the period under review, some 85 countries benefited from such advice and assistance.

(c) Setting of norms and standards

The objective of the work in this area is to make the projection and enforcement of intellectual property rights more effective throughout the world with due regard to the social, cultural and economic goals of countries. Significant work was carried out in several fields of intellectual property in 1992.

The second session of the Committee of Experts on a Possible Protocol to the Bern Convention examined the memorandum prepared by the International Bureau entitled "Questions concerning a possible Protocol to the Bern Convention". Discussions dealt with, *inter alia*, general questions, the right of reproduction: storage of works in computer systems, reprographic reproduction by libraries, archives and educational establishments, private reproduction for personal use by devices, possible exclusion of the application of non-voluntary licences for sound recording; the right of public display; right of rental and public lending right; right of importation; right of broadcasting: direct broadcasting by satellite, possible exclusion of restriction of the applications of non-voluntary broadcasting licences; definition of the notion of "public" in respect of certain qualified acts and terms of protection.

The first session of the Committee of Experts on a WIPO Model Law on the Protection of Producers of Sound Recordings considered a draft Model Law prepared by the International Bureau. The participants stressed the importance of reinforcing the rights of producers of sound recordings in the fight against piracy. They examined the draft Model Law which deals with, *inter alia*, the list of definitions covering such terms as "broadcasting", "communications to the public", "fixation", "performers", "public lending", "public performance", "sound recording", "producer of a sound recording", "rental", "reproduction"; the rights protected, limitations on rights and duration of protection; the transmission of ownership of rights and licences, collective administration of rights, enforcement and final provisions. The Committee recommended that the Model Law also cover the rights of performers; that recommendation was approved in September by the Assembly of the Bern Union.

The Assembly of the Bern Union decided on the continuation of the Committee of the Experts on a Possible Protocol to the Bern Convention and on the creation of another Committee of Experts on a Possible Instrument on the Protection of the Rights of Performers and Producers of Phonograms. The former Committee would discuss computer programs, databases, rental rights, non-voluntary licences for the sound recording of musical works and for primary broadcasting and satellite communication, distribution rights, including impor-

tation rights, duration of the protection of photographic works, communication to the public by satellite broadcasting, enforcement of rights, national treatment; the latter Committee would discuss questions relating to the effective international protection of the rights of performers and producers of phonograms.

The Committee of Experts on the Settlement of Intellectual Property Disputes between States held its fourth session. Discussions were based on the draft of a treaty prepared by the International Bureau. The Committee of Experts examined the draft articles concerning the establishment of a union, abbreviated expressions, sphere of application, consultations, good offices, conciliation and mediation, panel procedure, reporting on the compliance with the recommendation of the panel and arbitration. Notwithstanding the progress achieved during the fourth session, the Committee considered that a fifth session was necessary.

The Committee of Experts on the Harmonization of Laws for the Protection of Marks held its third and fourth sessions. It considered the draft of a treaty provisionally entitled "Treaty on the Simplification of Administrative Procedures concerning Marks", which had been prepared by the International Bureau. The draft included in particular provisions specifying the maximum conditions that Contracting Parties can require that an application for registration fulfil, the obligation of Contracting Parties to allow applications to refer to goods and/or services in several classes, the exclusion of the possibility of Contracting States requiring that signatures and other means of self-identification be legalized or authenticated, guaranteeing to applicants the possibility of asking in one and the same request for the recording of changes in names, addresses, ownership, representation or correction of mistakes concerning several registrations.

In response to the increasing resort to extrajudicial procedures, such as arbitration and mediation, for the settlement of intellectual property disputes between private parties, the International Bureau continued to study the possibility of providing services with respect to such procedures. Two meetings of a Working Group of Non-governmental Organizations on Arbitration and other Extra-judicial Mechanisms for the Resolution of Intellectual Property Disputes between Private Parties were held. The meetings considered the desirability of the provision of services by WIPO, as well as the types of services that could be provided. Among the types of services that were discussed were the establishment of mediation and arbitration procedures to be conducted under rules to be drafted by the International Bureau, the provision of administrative services, such as the appointment of mediators and arbitrators, at various stages in the conduct of those procedures, and the provision of model contract clauses that could be utilized by private parties wishing to make use of any of the procedures administered by WIPO.

The Preparatory Working Group of the Committee of Experts of the Nice Union held its twelfth session and approved a number of changes in the International Classification of Goods and Services for the purposes of the Registration of Marks (Nice Classification), which will be forwarded to the Committee of Experts of the Nice Union for adoption, and considered a proposal to restructure certain classes of the Nice Classification.

The Committee of Experts on the Development of the Hague Agreement concerning the International Deposit of Industrial Designs held its second session. Discussions were based on a draft Treaty on the International Registration of Industrial Designs prepared by the International Bureau, which aimed at im-

proving the current international registration system and at encouraging new States to accede to the Agreement.

(d) Countries in transition to a market economy

Since the establishment of a special unit, in October 1991, in the International Bureau, WIPO has given particular attention to the needs of this group of countries. The International Bureau assisted them, on request, in the preparation of laws dealing with one or more aspects of intellectual property. Advice was also given on the establishment of administrative structures to implement those laws, while assistance and training were extended in relation to accession to WIPO-administered treaties. Staff members of the International Bureau lectured in special seminars and meetings to promote the awareness of the importance of intellectual property in those countries.

(e) 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*.

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9. INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT

(a) Membership

(1) *Approval of applications for non-original membership*

At its fifteenth session (21-23 January 1992), the Governing Council decided, upon the recommendation of the Executive Board,[514] to accept the applications for non-original membership of Albania and Cambodia and classified the two States as category III members in accordance with articles 3.2 (b) and 13.1 (c) of the Agreement Establishing IFAD[515] and section 10 of the By-laws for the Conduct of Business of the Fund.

(2) Member Status of Yugoslavia

Schedule I, part I, of the Agreement Establishing IFAD classifies the Socialist Federal Republic of Yugoslavia as an original member of IFAD in category III.

On 27 April 1992, IFAD was informed, by means of a note verbale from the Embassy of the Socialist Federal Republic of Yugoslavia, that under the new Constitution promulgated on that date, the Socialist Federal Republic of Yugoslavia had purportedly been transformed into the Federal Republic of Yugoslavia, comprising the Republics of Serbia and Montenegro.

Following that unacknowledged announcement, on 29 September 1991, IFAD was informed, by a letter from the United Nations, that "the General Assembly considered that the Federal Republic of Yugoslavia (Serbia and Mon-

tenegro) cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations and decided that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations and that it shall not participate in the work of the General Assembly".

In view of the above, the advice of the Executive Board was sought as to the position that IFAD should adopt with respect to the membership status of Yugoslavia. At its forty-seventh session, the Executive Board Council decided to follow the decision of the General Assembly of the United Nations by agreeing that:

(i) The Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in IFAD;

(ii) Therefore, the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in IFAD, in accordance with the provisions of the Agreement establishing IFAD;

(iii) In the meantime, the Federal Republic of Yugoslavia (Serbia and Montenegro) shall not participate in the work of the governing bodies of IFAD.

(b) IFAD's Strategies for the Economic Advancement of Poor Rural Women

The Governing Council at its fifteenth session endorsed IFAD's Strategies for the Economic Advancement of Poor Rural Women.[516] In addition, the Governing Council recognized that the evolving gender and development approach towards addressing the economic advancement of poor rural women will further equip IFAD to continue building on its experience and strengthening the efficacy of its lending operations that address gender items.

In February 1992, a Summit on the Economic Advancement of Rural Women organized by IFAD took place in Geneva. The Summit was the culmination of a series of major regional consultations that had been organized in Cyprus (November 1990), Costa Rica (June 1991), Senegal (July-August 1991) and Malaysia (September 1991), and followed by an international consultation held in Italy in October 1991.

The Summit adopted the Geneva Declaration for Rural Women, subsequently endorsed by the Economic and Social Council of the United Nations.[517] The Declaration urged that the necessary steps be taken by all concerned to ensure that countries give urgent priority to rural women in development programmes so as to change their living conditions and prevent them from becoming impoverished. The Geneva Declaration proposed that the following activities be carried out in order to attain such objectives:

(i) Establishment of an International Steering Committee of the Geneva Summit on Rural Women;

(ii) Preparation of a report on the Geneva Summit;

(iii) Endorsement of the Geneva Declaration by the Economic and Social Council in 1992 and support therefor by Member States;

(iv) Establishment of a working link between the International Steering Committee and existing inter-agency mechanisms for women in development;

(v) Participation of the International Steering Committee in the Earth Summit at Rio de Janeiro in June 1992;

(vi) Holding of the first Summit follow-up meeting in June 1992 at a venue to be decided subsequently;

(vii) Holding of regional follow-up meetings within one year of the Summit;

(viii) Holding of national follow-up meetings;

(ix) Formulation and implementation of plans of action developed by Summit follow-up committees at the international, national and regional levels in accordance with the Geneva Declaration;

(x) Monitoring and evaluation of the implementation of the Geneva Declaration;

(xi) Holding of the first biennial meeting of First Ladies of Member Countries of the International Steering Committee in February 1994 in Brussels, hosted by the Queen of the Belgians;

(xii) Holding of a special meeting of the International Steering Committee prior to the Fourth World Conference on Women in 1995;

(xiii) The presentation of a report to the Fourth World Conference on Women.

(c) Establishment of the Consultation on the Fourth Replenishment of IFAD's Resources

The Governing Council at its fifteenth session unanimously adopted resolution 71/XV on 23 January 1992, after considering the need for the establishment of a Consultation on the Fourth Replenishment of IFAD's Resources (the Consultation) and in accordance with Article 4.3 of the Agreement Establishing IFAD (the Agreement), which provides that, in order to assure continuity in the operations of IFAD, the Governing Council shall periodically review the adequacy of the resources available to IFAD. The Consultation was established under the chairmanship of the President of IFAD, consisting of all member States from categories I and II and 12 member States from category III (Cameroon, Egypt, Kenya and Senegal (Africa), Bangladesh, India, Pakistan and the Philippines (Asia) and Colombia, Costa Rica, Mexico and Panama (Latin America and the Caribbean)). The Consultation will aim at adopting a resolution providing for the Fourth Replenishment of IFAD's Resources.

(d) Establishment of the Credit Union of IFAD Employees

At its forty-sixth session in September 1992, the Executive Board approved the establishment of a Credit Union of IFAD Employees and the statutes thereof. At its forty-seventh session in December 1992, the Executive Board approved the extension of a line of credit to the Credit Union of IFAD Employees and the provision of certain start-up costs during the first three years of its operations.

10. UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

(a) Constitutional matters

In 1992 Armenia, Croatia, Slovenia and Bosnia and Herzegovina became members of UNIDO, thus bringing the membership as of 30 October 1992 to a total of 159 States.[518]

(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 intergovernmental and governmental organizations, and regarding appropriate relations with non-governmental and other organizations, adopted by the General Conference,[519] UNIDO in 1992 concluded the following agreements:

(i) Upon approval by the Industrial Development Board at its 10th session,[520] UNIDO concluded the following relationship agreement with an intergovernmental organization not part of the United Nations system:[521]

— Relationship agreement with the Asian-African Legal Consultative Committee (AALLC), signed on 6 November;

(ii) UNIDO concluded the following agreements or working arrangements with Governments, governmental organizations or other organizations:

— Exchange of letters with the Government of the Republic of Korea regarding the extension of the trust fund agreement and related project entitled "Promotion of industrial cooperation between enterprises in the People's Republic of China and the Republic of Korea", signed on 31 July and 4 August;[521]

— Memorandum of understanding for cooperation with the Government of the Russian Federation, signed on 3 and 4 April;[521]

— Agreement with the Government of the Russian Federation on the activities of the UNIDO Centre for International Industrial Cooperation in the Russian Federation and related exchange of letters, both signed on 18 December;[521]

— Agreement with the Government of the Republic of Tunisia regarding the arrangements for the first Consultation on the construction industry, signed on 10 December;[521]

— Memorandum of Understanding with the Government of the United States of America for technical cooperation on environmental protection and industrial development, signed on 3 June;[521]

— Exchange of letters with the Government of the Commonwealth of Puerto Rico concerning the conclusion of a working arrangement, signed on 9 June;[521]

— Agreement with the permanent secretariat of the Latin American Economic System (SELA) concerning the third programme of cooperation, signed on 30 October;[521]

— Memorandum of Understanding and Cooperation with the Biotechnology Center of Excellence Corporation, Boston, United States of America, and protocol confirming that Memorandum of Understanding and Cooperation, signed on 7 May;[521]

— Working arrangement with the Financing Agency for Studies and Projects of Brazil, signed on 5 June;[521]

— Exchange of letters with the Research Area of Trieste regarding the extension until 31 December 1992 of the 1989 agreement and related rental agreement between the Research Area of Trieste and UNIDO with respect to the related project on pilot activities, signed on 1 July and 23 September.[521]

(c) Agreements with the United Nations or its organs

(i) As in previous years, UNIDO concluded an agreement with the United Nations on arrangements for the sale of UNIDO publications;[521]

(ii) With the Economic Commission for Latin America and the Carribbean (ECLAC) UNIDO concluded a Memorandum of understanding, signed on 7 October 1991 and 21 December 1992.[521]

(d) Standard Basic Cooperation Agreement

A Standard Basic Cooperation Agreement was concluded with Nigeria.[521]

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11. INTERNATIONAL ATOMIC ENERGY AGENCY

CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL[522]

In accordance with article 16 of the Convention, a review conference of the parties to the Convention was convened by IAEA at Vienna on 29 September 1992. On that date, the parties represented at the conference adopted a final statement which, among other things, affirmed that the Convention provides a sound basis for physical protection of nuclear material during international transport and is acceptable in its current form and reaffirmed their full support for the Convention and urged all States which have not already done so to accede to the Convention.

During 1992, one State, Croatia, succeeded to the Convention, bringing the total to 41 parties.

CONVENTION ON EARLY NOTIFICATION OF A NUCLEAR ACCIDENT[523]
CONVENTION ON ASSISTANCE IN THE CASE OF A NUCLEAR ACCIDENT OR RADIOLOGICAL EMERGENCY[524]

During 1992, three States—Croatia (by succession with effect from 1991), Latvia and Mauritius—adhered to the Notification Convention. By the end of 1992, 64 States had expressed consent to be bound.

In 1992, the same three States and Sweden adhered to the Convention on Assistance. By the end of 1992, 62 States had expressed consent to be bound.

VIENNA CONVENTION ON CIVIL LIABILITY FOR NUCLEAR DAMAGE, 1963[525]

During 1992, three States—Croatia (by succession with effect from 1991), Lithuania and Romania—adhered, bringing the total number of States consenting to be bound by the end of the year to 18.

JOINT PROTOCOL RELATING TO THE APPLICATION OF THE VIENNA CONVENTION AND THE PARIS CONVENTION[526]

The Joint Protocol entered into force on 27 April 1992, with the following States parties: Cameroon, Chile, Denmark, Egypt, Hungary, Italy, Netherlands, Norway, Poland and Sweden. Subsequently, Romania became a party, bringing the total number of States consenting to be bound at the end of 1992 to 11.

AFRICAN REGIONAL CO-OPERATIVE AGREEMENT[527]

Two additional States, Zaire and South Africa, accepted the African Regional Cooperative Agreement for Research, Development and Training related to Nuclear Energy (AFRA) during 1992, bringing the total to 15 States.

REGIONAL COOPERATIVE AGREEMENT FOR RESEARCH, DEVELOPMENT AND TRAINING RELATED TO NUCLEAR SCIENCE AND TECHNOLOGY, 1987 (RCA AGREEMENT)[528]

On 11 June 1992, an Agreement to Extend the RCA Agreement entered into force. As a result, the 1987 Agreement will remain in force for a further period of five years. At the end of the year, 14 States had become parties to the Extension Agreement.

SAFEGUARDS AGREEMENTS

During 1992, Safeguards Agreements were concluded between the IAEA and nine States: Algeria, Cameroon, Estonia, Lithuania, Malawi, Syrian Arab Republic, Trinidad and Tobago, United Kingdom of Great Britain and Northern Ireland and United Republic of Tanzania. The agreements with Cameroon, Lithuania, Malawi, the Syrian Arab Republic and the United Republic of Tanzania were concluded pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons. The agreement with Trinidad and Tobago was concluded pursuant to the Non-Proliferation Treaty and the Treaty of Tlatelolco. The agreement with the United Kingdom was concluded pursuant to Additional Protocol I of the Treaty of Tlatelolco.

The agreements with Algeria,[529] Lithuania,[530] Malawi,[531] the Syrian Arab Republic,[532] Trinidad and Tobago,[533] as well as the Safeguards Agreements concluded in 1991 with the Democratic People's Republic of Korea[534] and with Saint Vincent and the Grenadines[535] entered into force in 1992. The Safeguards Agreement concluded with Belize in 1986 was signed by Belize in 1992, but has not yet entered into force.

By the end of 1992, there were 188 Safeguards Agreements in force with 110 States,[536] 96 of which were concluded pursuant to the Non-Proliferation Treaty and/or the Treaty of Tlatelolco with 96 non-nuclear-weapon States and 3 nuclear-weapon States.

LIABILITY FOR NUCLEAR DAMAGE

In 1992, the Standing Committee on Liability for Nuclear Damage held two sessions. Further progress was made on the revision of the Vienna Convention by reducing the number of alternative proposals and adopting, for further consideration, the texts of draft amendments on all issues where need for improvement was recognized. On the issue of supplementary funding, the Committee focused on two alternative draft instruments. In view of the similarities between them in some basic aspects, consideration was given to the suggestion

for a common solution by incorporating certain key elements of one draft into the other. Differences of principle remained on the proposals relating to international State liability and its relationship with a civil liability regime which were considered in the context of revision of the Vienna Convention.

There was wide support in the Committee for the view that efforts at the current stage should be concentrated on the proposals for revision of the Vienna Convention and elaboration of a supplementary funding convention where a good basis for progress existed, and that they should continue to be considered in conjunction with each other. In order to facilitate the negotiating process, IAEA co-sponsored with the Nuclear Energy Agency (NEA) of the Organization for Economic Cooperation and Development (OECD) a symposium on "Nuclear Accidents — Liabilities and Guarantees", held at Helsinki from 31 August to 3 September.

The Board of Governors considered the question of nuclear liability at its session in June. Upon receiving its report, the General Conference adopted resolution GC(XXXVI)/RES/585 affirming the priority it attached to the consideration of all aspects of nuclear liability and expressing the hope that the Standing Committee would complete its preparatory work soon, so that a revision conference on the Vienna Convention might then be convened.

NOTES

[1]United Nations document CD/CW/WP.400/Rev.1; see also *International Legal Materials*, vol. XXXII (1993), p. 800.

[2]Adopted without a vote.

[3]General Assembly resolution 2373 (XXII), annex; see also United Nations, *Treaty Series*, vol. 729, p. 161.

[4]Adopted by a recorded vote of 168 to none.

[5]Adopted by a recorded vote of 162 to none, with 2 abstentions.

[6]General Assembly resolution 2826 (XXVI), annex; see also United Nations, *Treaty Series*, vol. 1015, p. 163.

[7]Adopted without a vote.

[8]Adopted by a recorded vote of 168 to none, with 1 abstention.

[9]Adopted without a vote.

[10]*International Legal Materials*, vol. XXX, p. 6.

[11]U.S. Senate Treaty documents, 102-37. 102nd Congress, 2nd Session.

[12]Adopted without a vote.

[13]United Nations, *Treaty Series*, vol. 1025, p. 297.

[14]Adopted by a recorded vote of 159 to 1, with 1 abstention.

[15]Adopted without a vote.

[16]Adopted without a vote.

[17]Adopted without a vote.

[18]Adopted without a vote.

[19]Adopted by a recorded vote of 159 to 1, with 4 abstentions.

[20]Adopted by a recorded vote of 118 to 2, with 41 abstentions.

[21]United Nations, *Treaty Series*, vol. 480, p. 43.

[22]Adopted without a vote.

[23]Adopted without a vote.

[24]General Assembly resolution S-10/2.

[25]Adopted by a recorded vote of 144 to 3, with 13 abstentions.

[26]Adopted by a recorded vote of 129 to 3, with 35 abstentions.

[27]General Assembly resolution 2832 (XXVI).

[28]See *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 45* and corrigendum (A/34/35 and Corr. 1).

[29]Adopted without a vote.

[30]United Nations, *Treaty Series*, vol. 634, p. 281.

[31]Adopted by a recorded vote of 64 to 3, with 90 abstentions.

[32]Adopted without a vote.

[33]Adopted by a recorded vote of 128 to 3, with 30 abstentions.

[34]See A/45/568.

[35]A/45/568.

[36]Adopted without a vote.

[37]United Nations, *Treaty Series*, vol. 1342, p. 137.

[38]Adopted by a recorded vote of 164 to none, with 2 abstentions.

[39]General Assembly resolution 2222 (XXI), annex; see also United Nations, *Treaty Series*, vol. 610, p. 205.

[40]Adopted without a vote.

[41]Adopted without a vote.

[42]United Nations, *Treaty Series*, vol. 1108, p. 151.

[43]Adopted without a vote.

[44]Adopted without a vote.

[45]Adopted without a vote.

[46]General Assembly resolution 2734 (XXV); reproduced in *Juridical Yearbook, 1970*, p. 62.

[47]Adopted by a recorded vote of 122 to 1, with 43 abstentions.

[48]See A/47/699.

[49]Adopted by a recorded vote of 79 to none, with 84 abstentions.

[50]See A/47/699.

[51]A/47/277-S/24111; see *Official Records of the Security Council, Forty-seventh Year, Supplement for April, May and June 1992*, document S/24111.

[52]A/C.1/47/7.

[53]Adopted without a vote.

[54]S/23500; see *Official Records of the Security Council, Forty-seventh Year, Supplement for January, February and March 1992*, document S/23500.

[55]S/24728; see *Official Records of the Security Council, Forty-seventh Year, Supplement for October, November and December 1992*, document S/24728.

[56]S/24872; see *Official Records of the Security Council, Forty-seventh Year, Supplement for October, November and December 1992*, document S/24872.

[57]For the report of the Subcommittee, see A/AC.105/514.

[58]A/AC.105/484.

[59]A/AC.105/C.2/L.154/Rev.11.

[60]A/AC.105/514, annex I.

[61]A/AC.105/C.2/L.189.

[62]A/AC.105/484, annex II, para. 12.

[63]A/AC.105/514, annex II.

[64]A/AC.105/C.2/15 and Add.1-13.

[65]A/AC.105/C.2/16 and Add. 1-10.

[66]A/AC.105/C.2/L.187.

[67]A/AC.105/C.2/L.182.

[68]A/AC.105/C.2/L.188.

[69]A/AC.105/514, annex III.

[70]See *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 20* (A/47/20) chap. II, sect. C.

[71]Ibid., annex.

[72]A/AC.105/L.194.

[73]A/AC.105/L.197.

[74]Adopted without a vote.

[75]See A/47/610.

[76]*Official Records of the General Assembly, Forty-seventh Session, Supplement No. 20* (A/47/20).

[77]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).

[78]Adopted without a vote.

[79]See A/47/610.

[80]General Assembly resolution 2222 (XXI), annex.

[81]General Assembly resolution 2777 (XXVI), annex.

[82]Adopted by a recorded vote of 96 to 1, with 9 abstentions.

[83]See A/47/696.

[84]A/47/541 and A/47/542.

[85]A/47/624.

[86]See *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992*, vol. I, *Resolutions Adopted by the Conference* (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex II.

[87]United Nations, *Treaty Series*, vol. 402, p. 71.

[88]*International Legal Materials*, vol. XXX, No. 6, p. 1461.

[89]For detailed information, see *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 25* (A/47/25).

[90]This decision as well as other decisions referred to in this section were adopted by consensus on 5 February 1992.

[91]UNEP/GC SS.III/4, annex.

[92]See UNEP/GC.14/13 and A/42/427, annex.

[93]UNEP/Ozl.Pro.2/3, annex II.

[94]See UNEP/IG.80/3.

[95]UNEP/GCSS.III/2 and Corr.1.

[96]For detailed information, see A/CONF.151/PC/128.

[97]A/CONF.151/PC/WG.III/L.31.

[98]A/CONF.151/PC/WG.III/L.32.

[99]See A/CONF.151/PC/WG.I/L.46.

[100]See A/CONF.151/PC/WG.III/L.33/Rev.1.

[101]A/CONF.151/L.1.

[102]A/CONF.151/L.3 and Add.1-6, Add.6/Corr.1, Add.7-12, Add.12/Corr.1 and Add.13-44.

[103]See *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992*, vol. III, *Statements Made by Heads of State or Government at the Summit Segment of the Conference* (United Nations publication, Sales No. E.93.I.8).

[104]A/AC.237/18 (Part II) Add.1 and Corr.1, annex I; also reproduced in chap. IV, p. 340 below.

[105]See United Nations Environment Programme, Convention on Biological Diversity/ Environmental Law and Institutions Programme Activity Centre, June 1992; also reproduced in chap. IV, p. 359 below.

[106]*Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992*, vol. I, *Resolutions Adopted by the Conference* (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1.

[107]*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.

[108]A/CONF.151/17.

[109]All resolutions on the subject were adopted on the recommendation of the Second Committee without vote on 22 December 1992, with exception of resolution 47/195, which was adopted without reference to a Main Committee.

[110]See A/47/719.

[111]*Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992* (A/CONF.151/26/Rev.1 (Vol.I and Vol.I/Corr.1, Vol.II, Vol.III and Vol.III/Corr.1)) (United Nations publication, Sales No. E.93.I.8 and corrigenda).

[112]Ibid., vol. I: *Resolutions adopted by the Conference*, resolution 1, annex I.

[113]Ibid., annex II.

[114]Ibid., annex III.

[115]A/AC.237/18 (Part II) Add.1 and Corr.1, annex I.

[116]See United Nations Environment Programme, *Convention on Biological Diversity* (Environmental Law and Institutions Programme Activity Centre), June 1992.

[117]A/47/598 and Add.1.

[118]See Food and Agriculture Organization of the United Nations, *Report of the FAO World Conference on Fisheries Management and Development, Rome, 27 June–6 July 1984* (Rome, 1984).

[119]A/CONF.151/15, annex.

[120]*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.

[121]Adopted without a vote.

[122]See A/47/718/Add.2.

[123]A/47/636, annex.

[124]TD/364, part one, sect. A, "A New Partnership for Development; The Cartagena Commitment", adopted by the United Nations Conference on Trade and Development at its eighth session, held at Cartagena de Indias, Colombia, from 8 to 25 February 1992.

[125]For detailed information, see *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 12* (A/47/12), and ibid., *Supplement 12A* (A/47/12/Add.1).

[126]EC/SCP/64.

[127]United Nations, *Treaty Series*, vol. 189, p. 137.

[128]A. Peter Mutharika, *The Regulation of Statelessness under International and National Law* (Dobbs Ferry, New York: Oceana Publications, 1989), vol. II, sect. 2, p. 137.

[129]United Nations, *Yearbook on Human Rights for 1986* (Sales No. E.91.XIV.4), part II, sect. B.1.

[130]For detailed information, see *Official Records of the General Assembly, Forty-seventh session, Supplement No. 12A* (A/47/12/Add.1).

[131]United Nations, *Treaty Series*, vol. 189, p. 137.

[132]Ibid., vol. 606, p. 267.

[133]EC/SCP/74.

[134]Adopted without a vote.

[135]See A/47/715.

[136]United Nations, *Treaty Series*, vol. 520, p. 151.

[137]Ibid., vol. 1019, p. 175.

[138]Ibid., vol. 976, p. 3.

[139]Ibid., p. 105.

[140]E/CONF.82/15 and Corr.2; issued also as a United Nations publication (Sales No. E.91.XI.6).

[141]All General Assembly resolutions on the subject were adopted without a vote and on the same date.

[142]All resolutions in question were adopted on the recommendation of the Third Committee (see A/47/710).

[143]General Assembly resolution S-17/2, annex; excerpts from the Global Programme of Action are reprinted in *Juridical Yearbook, 1990*, p. 77.

[144]E/1990/39 and Corr.1 and 2 and Add.1.

[145]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.

[146]A/47/471.

[147]A/47/378 and A/47/471.

[148]A/47/471.

[149]A/47/378.

[150]United Nations, *Treaty Series*, vol. 993, p. 3.

[151]Ibid., vol. 999, p. 171.

[152]Ibid.

[153]General Assembly resolution 44/128, annex.

[154]United Nations, *Treaty Series*, vol. 660, p. 195.

[155]Adopted without a vote.

[156]See A/47/658.

[157]A/47/425.

[158]Adopted without a vote.

[159]See A/47/658.

[160]General Assembly resolution 38/14, annex.

[161]*Official Records of the General Assembly, Forty-seventh Session, Supplement No. 18* (A/47/18).

[162]Adopted without a vote.

[163]See A/47/658.

[164]General Assembly resolution 3068 (XXVIII), annex; see also United Nations, *Treaty Series*, vol. 1015, p. 243.

[165]Adopted by a recorded vote of 113 to 2, with 44 abstentions.

[166]See A/47/658.

[167]A/47/426.

[168]General Assembly resolution 217 A (III).

[169]United Nations, *Treaty Series*, vol. 1249, p. 13.

[170]Adopted without a vote.

[171]See A/47/670.

[172]A/47/368.

[173]*Official Records of the General Assembly, Forty-sixth Session, Supplement No. 38* (A/46/38).

[174]Ibid., *Forty-seventh Session, Supplement No. 38* (A/47/38).

[175]General Assembly resolution 39/46, annex.

[176]Adopted without a vote.

[177]See A/47/678/Add.1.

[178]*Official Records of the General Assembly, Forty-seventh Session, Supplement No. 44* (A/47/44).

[179]General Assembly resolution 44/25, annex.

[180]Adopted without a vote.

[181]A/47/678/Add.1.

[182]A/47/428.

[183]See *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 41* (A/47/41), annex III.

[184]A/47/667, annex.

[185]Adopted without a vote.

[186]See A/47/678/Add.2.

[187]A/45/625, annex.

[188]*Final Report of the World Conference on Education for All: Meeting Basic Learning Needs, Jomtien, Thailand, 5-9 March 1990*, Inter-Agency Commission (UNDP, UNESCO, UNICEF, World Bank) for the World Conference on Education for All, New York, 1990, appendix 1.

[189]*Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992*, vol I, *Resolutions Adopted by the Conference* (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex II.

[190]General Assembly resolution 45/158.

[191]Adopted without a vote.

[192]See A/47/678/Add.1.

[193]A/47/429.

[194]Adopted without a vote.

[195]See A/47/678/Add.1.

[196]See A/44/98, sect. VII, and A/45/636, annex.

[197]See A/44/668, annex.

[198]See A/47/628, annex.

[199]Adopted without a vote.

[200]See A/47/659.

[201]A/47/433.

[202]Adopted by a recorded vote of 107 to 22, with 33 abstentions.

[203]See A/47/659.

[204]Adopted by a recorded vote of 118 to 10, with 36 abstentions.

[205]See A/47/659.

[206]General Assembly resolution 44/34, annex.

[207]A/47/412, annex.

[208]Adopted without a vote.

[209]See A/47/678/Add.2.

[210]A/47/501.

[211]General Assembly resolution 217 A (III).

[212]General Assembly resolution 260 A (III), annex.

[213]General Assembly resolution 2106 A (XX), annex.

[214]See General Assembly resolution 2200 A (XXI), annex.

[215]Ibid.

[216]General Assembly resolution 36/55.

[217]General Assembly resolution 44/25, annex.

[218]Adopted without a vote.

[219]See A/47/678/Add.2.

[220]General Assembly resolution 41/128, annex.

[221]*Report of the United Nations Conference on Environment and Development, Rio De Janeiro, 3-14 June 1992*, vol I, *Resolutions Adopted by the Conference* (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex II.

[222]E/CN.4/1992/10.

[223]See *Official Records of the Economic and Social Council, 1991, Supplement No. 22* (E/1991/22), chap. II, sect. A.

[224]Ibid., *1992, Supplement No. 2* (E/1992/22), chap II, sec. A.

[225]Adopted without a vote.

[226]See A/47/678/Add.2.

[227]See *Official Records of the Economic and Social Council, 1992, Supplement No. 2* (E/1992/22), chap. II, sect. A.

[228]Adopted without a vote.

[229]See A/47/678/Add.2.

[230]General Assembly resolution 36/55.

[231]See General Assembly resolution 2200 A (XXI), annex.

[232]Adopted without a vote.

[233]See A/47/678/Add.2.

[234]Adopted without a vote.

[235]See A/47/678/Add.2.

[236]See *Official Records of the Economic and Social Council, 1992, Supplement No. 2* (E/1992/22), chap. II, sec. A.

[237]Ibid., *1980, Supplement No. 3* and corrigendum (E/1980/13 and Corr. 1), chap. XXVI, sect. A.

[238]Adopted without a vote.

[239]See A/47/678/Add.2.

[240]See *Official Records of the Economic and Social Council, 1992, Supplement No. 2* (E/1992/22), chap. II, sect. A, resolution 1992/72.

[241]E/CN.4/1988/22 and Add.1 and 2, E/CN.4/1989/25, E/CN.4/1990/22 and Corr.1 and Add.1, E/CN.4/1991/36 and E/CN.4/1992/30 and Corr.1 and Add.1.

[242]Adopted with a vote.

[243]See A/47/658.

[244]Adopted without a vote.

[245]See A/47/678/Add.2.

[246]See A/45/636, annex.

[247]A/47/502.

[248]Adopted without a vote.

[249]See A/47/678/Add.2.

[250]See *Official Records of the Economic and Social Council, 1992, Supplement No. 2* (E/1992/22), chap. II, sect. A.

[251]Adopted by a recorded vote of 115 to none, with 48 abstentions.

[252]See A/47/678/Add.2.

[253]Adopted by a recorded vote of 141 to none, with 20 abstentions.

[254]See A/47/678/Add.2.

[255]See A/47/668/Add.1.

[256]A/47/668 and Corr.1.

[257]See A/47/668 and Corr.1, sect. II.A.

[258]Ibid.

[259]Adopted without a vote.

[260]A/47/715.

[261]A/37/145, A/38/450, A/40/348 and Add.1 and 2, A/41/472, A/43/734 and Add.1, A/45/524 and A/47/352.

[262]*Winning the Human Race? The Report of the Independent Commission on International Humanitarian Issues* (London and New Jersey, Zed Books Ltd., 1988).

[263]Adopted without a vote.

[264]See A/47/678/Add.2.

[265]*Official Records of the General Assembly, Forty-seventh Session, Supplement No. 24* (A/47/24).

[266]Ibid., Supplement No. 24A (A/47/24/Add.1).

[267]Adopted without a vote.

[268]See A/47/678/Add.2.

[269]A/47/503.

[270]Adopted without a vote.

[271]See A/47/703.

[272]See A/46/703 and Corr.1.

[273]See *Official Records of the Economic and Social Council, 1992, Supplement No. 10* (E/1992/30).

[274]A/47/399 and Corr.1.

[275]A/47/379 and Corr.1.

[276]A/47/381.

[277]Adopted without a vote.

[278]A/47/703.

[279]See *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August–7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. C, resolutions 15 and 24.

[280]Ibid., resolution 24, annex.

[281]See General Assembly resolutions 45/116, 45/117 and 45/118.

[282]See *Official Records of the Economic and Social Council, 1992, Supplement No. 10* (E/1992/30).

[283]United Nations, *Treaty Series*, vol. 78, p. 277.

[284]Adopted without a vote.

[285]See A/47/678/Add.1.

[286]A/47/427.

[287]*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), doc. 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).

[288]For detailed information on the work of the Preparatory Commission, see the report of the Secretary-General (A/47/623).

[289]LOS/PCN/L.102, annex.

[290]LOS/PCN/L.108, annex.

[291]LOS/PCN/R.10.

[292]LOS/PCN/L.108.

[293]LOS/PCN/WP.47/Rev.2.

[294]LOS/PCN/WP.49/Rev.2.

[295]LOS/PCN/WP.50/Rev.2.

[296]LOS/PCN/L.104.

[297]LOS/PCN/SCN.1/WP.15.

[298]LOS/PCN/SCN.1/1984/CRP.3.

[299]LOS/PCN/L.105.

[300]LOS/PCN/SCN.2/1992/CRP.6.

[301]LOS/PCN/SCN.3/WP.6/Add.6.

[302]LOS/PCN/SCN.3/WP.6/Add.8.

[303]LOS/PCN/L.99.

[304]LOS/PCN/SCN.4/WP.5/Rev.1 and Corr.1.

[305]LOS/PCN/SCN.4/1992/CRP.45.

[306]LOS/PCN/SCN.4/WP.6/Rev.1.

[307]Adopted by a recorded vote of 135 to 1, with 9 abstentions.

[308]A/47/623, paras. 20-23.

[309]Ibid., para. 21.

[310]LOS/PCN/L.87, annex.

[311]LOS/PCN/L.102, annex.

[312]LOS/PCN/L.108, annex.

[313]*Official Records of the General Assembly, Forty-fifth Session, Supplement No. 6* (A/45/6/Rev. 1), vol. I.

[314]A/47/623.

[315]Ibid., paras. 173-177.

[316]For the composition of the Court, see General Assembly decisions 45/307 and 46/315.

[317]As of 31 December 1992, 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 56.

[318]*I.C.J. Reports 1992*, p. 222.

[319]*I.C.J. Reports 1991*, p. 187.

[320]*I.C.J. Reports 1992*, p. 225.

[321]*I.C.J. Reports 1992*, p. 240.

[322]A summary of the Judgment is taken from *I.C.J. Yearbook 1991-1992*, No. 46, p. 155.

[323]*Northern Cameroon's Judgment, I.C.J. Reports 1963*, p. 32.

[324]Ibid., p. 37.

[325]*I.C.J. Reports 1992*, pp. 270-300.

[326]Ibid., pp. 301-302, 303-325, 326-328 and 329-343.

[327]Ibid., p. 345.
[328]Ibid., p. 219.
[329]Ibid., p. 228.
[330]*I.C.J. Reports 1991*, p. 53.
[331]*I.C.J. Reports 1992*, p. 348.
[332]Ibid., p. 237.
[333]Ibid., pp. 3 and 114.
[334]Summaries of the Orders are taken from *I.C.J. Yearbook 1991-1992* No. 46, p. 155.
[335]*I.C.J. Reports 1992*, pp. 17-19 and 129-131.
[336]Ibid., pp. 20-23 and 132-135.
[337]Ibid., pp. 24-25 and 136-137.
[338]Ibid., pp. 26-27 and 138-139.
[339]Ibid., pp. 28-32 and 140-142.
[340]Ibid., pp. 33-49 and 143-159.
[341]Ibid., pp. 50-71 and 160-181.
[342]Ibid., pp. 72-77 and 182.
[343]Ibid., pp. 78-93 and 183-198.
[344]Ibid., pp. 94-112 and 199-217.
[345]Ibid., pp. 231 and 234.
[346]Ibid., p. 763.
[347]Ibid., p. 351.
[348]A summary of the Judgment is taken from *I.C.J. Yearbook 1992-1993* No. 47, p. 195.
[349]*Frontier Dispute, I.C.J. Reports 1986*, p. 586, para. 63.
[350]See sketch-map A annexed; for the identification letters and co-ordinates of the various defined points, see the operative clause of the Judgment, set out below, and the 1:50,000 maps available for inspection in the Registry.
[351]See sketch-map B annexed; for the identification letters and co-ordinates of the various defined points, see the operative clause of the Judgment, set out below, and the 1:50,000 maps available for inspection in the Registry.
[352]See sketch-map C annexed; for the identification letters and co-ordinates of the various defined points, see the operative clause of the Judgment, set out below, and the 1:50,000 maps available for inspection in the Registry.
[353]See sketch-map D annexed; for the identification letters and co-ordinates of the various defined points, see the operative clause of the Judgment, set out below, and the 1:50,000 maps available for inspection in the Registry.
[354]Ibid.; for the identification letters and co-ordinates of the various defined points, see the operative clause of the Judgment, set out below, and the 1:50,000 maps available for inspection in the Registry.
[355]See sketch-map E annexed; for the identification letters and co-ordinates of the various defined points, see the operative clause of the Judgment, set out below, and the 1:50,000 maps available for inspection in the Registry.
[356]See sketch-map F annexed; for the identification letters and co-ordinates of the various defined points, see the operative clause of the Judgment, set out below, and the 1:50,000 maps available for inspection in the Registry.
[357]Article 31 of the Vienna Convention on the Law of Treaties; United Nations, *Treaty Series*, vol. 1155, p. 331.
[358]Article 31, para. 3(b).
[359]See sketch-map G annexed.
[360]*I.C.J. Reports 1951*, p. 130.
[361]*I.C.J. Reports 1982*, p. 74.
[362]*I.C.J. Reports 1992*, pp. 619-620.
[363]Ibid., pp. 621-628 and 629-731.
[364]Ibid., pp. 732-761.

[365]For the membership of the Commission, see *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 10* (A/47/10), chap. I, para. 2.

[366]For detailed information on the work of the Commission, see *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 10* (A/47/10).

[367]A/CN.4/442.

[368]A/CN.4/435 and Add.1 and Corr.1.

[369]A/CN.4/435/Add.1.

[370]General Assembly resolution 44/39.

[371]A/CN.4/440 and Add.1.

[372]A/CN.4/444 and Corr.1 and Add.1, 2 and 3.

[373]A/CN.4/L.472.

[374]A/CN.4/443 and Corr.1.

[375]*Official Records of the General Assembly, Forty-seventh Session, Supplement No. 10* (A/47/10).

[376]Adopted without a vote.

[377]See A/47/584.

[378]*Official Records of the General Assembly, Forty-seventh Session, Supplement No. 10* (A/47/10), annex.

[379]Ibid., chap. V, sect. C.

[380]For the membership of the Commission, see *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 17* (A/47/17), chap. I, sect. B.

[381]For detailed information on the work of the Commission, see *Yearbook of the United Nations Commission on International Trade Law*, vol. XXIII: 1992 (United Nations publication, Sales No. E.94.V.7).

[382]A/CN.9/367.

[383]*Official Records of the General Assembly, Forty-sixth Session, Supplement No. 17* (A/46/17).

[384]For the text of the Model Law, see ibid., *Forty-seventh Session, Supplement No. 17* (A/47/17), annex I.

[385]A/CN.9/362.

[386]A/CN.9/362/Add.1-15.

[387]A/CN.9/362/Add.16.

[388]A/CN.9/362/Add.17.

[389]*Official Records of the General Assembly, Forty-seventh Session, Supplement No. 17* (A/47/17), paras. 137 and 138.

[390]A/CN.9/360.

[391]Ibid., paras. 129-133.

[392]A/CN.9/356.

[393]A/CN.9/359.

[394]A/CN.9/358.

[395]A/CN.9/361.

[396]A/CN.9/348.

[397]*Official Records of the General Assembly, Forty-third Session, Supplement No. 17* (A/43/17), paras. 98-109.

[398]A/CN.9/364.

[399]The 1974 Convention on the Limitation Period in the International Sale of Goods, A/CONF.63/15; *Juridical Yearbook, 1974*, p. 101; 1980 Protocol amending the Convention on the Limitation Period in the International Sale of Goods, A/CONF.97/18; *Juridical Yearbook, 1980*, p. 191; 1978 United Nations Convention on the Carriage of Goods by Sea, A/CONF.89/13, United Nations publication, Sales No. E/80/VIII.1; 1980 United Nations Convention on Contracts for the International Sale of Goods, A/CONF.97/18; *Juridical Yearbook, 1980*, p. 116; 1988 United Nations Convention on International Bills of Exchange and International Promissory Notes, General Assembly resolution 43/165; and 1991 United Nations Convention on the Liability of Operators of Transport Terminals in International Trade, A/CONF.152/13; *Juridical Yearbook, 1991*, p. 232.

[400]United Nations, *Treaty Series*, vol. 330, p. 3.

[401] A/CN.9/368.

[402] A/CN.9/363.

[403] *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 17* (A/46/17), paras. 343-349.

[404] A/CN.9/1992/INF.2.

[405] Adopted without a vote.

[406] See A/47/586.

[407] *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 17* (A/47/17).

[408] Ibid., annex I.

[409] Ibid., chap. III.

[410] *Official Records of the United Nations Conference on the Carriage of Goods by Sea, Hamburg, 6-31 March 1978* (United Nations publication, Sales No. E.80.VIII.1), document A/CONF.89/13, annex I.

[411] Adopted by a recorded vote of 100 to 9, with 34 abstentions.

[412] See A/47/580.

[413] A/CONF.67/16; reproduced in *Juridical Yearbook, 1974*, p. 87.

[414] Adopted without a vote.

[415] See A/47/581.

[416] A/47/324.

[417] United Nations, *Treaty Series*, vol. 1125, p. 3.

[418] Ibid., vol. 75, p. 2.

[419] Adopted without a vote.

[420] See A/47/582.

[421] A/47/325 and Add.1 and 2.

[422] Adopted without a vote.

[423] See A/47/583.

[424] A/47/384 and Add.1.

[425] A/C.6/47/L.12.

[426] Adopted without a vote.

[427] See A/47/590.

[428] A/47/327 and Add.1.

[429] United Nations, *Treaty Series*, vol. 596, p. 261.

[430] A/C.6/47/L.7.

[431] Adopted without a vote.

[432] See A/47/591.

[433] See Carnegie Endowment for International Peace, *The Hague Conventions and Declarations of 1899 and 1907* (New York, Oxford University Press, 1915).

[434] United Nations, *Treaty Series*, vol. 75, p. 287.

[435] Ibid., vol. 1125, p. 4.

[436] Ibid., vol. 1108, p. 151.

[437] ENMOD/CONF.II/12, part II.

[438] *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992*, vol I, *Resolutions Adopted by the Conference* (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex II.

[439] A/47/328.

[440] For the report of the Special Committee, see *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 33* (A/47/33).

[441] Ibid., para. 31.

[442] A/AC.182/L.65 and Corr.1.

[443] *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 33* (A/45/33).

[444] A/AC.182/L.72.

[445] A/AC.182/L.73 and Rev.1.

[446] See *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 33* (A/46/33), para. 14.

[447]A/AC.182/1992/CRP.2; reproduced in ibid., *Forty-seventh Session, Supplement No. 33* (A/47/33), para. 123.

[448]Ibid., chap. III.

[449]A/45/742, para. 5.

[450]Adopted without a vote.

[451]See A/47/588.

[452]*Official Records of the General Assembly, Forty-seventh Session, Supplement No. 33* (A/47/33).

[453]For the report of the Committee, see *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 26* (A/47/26).

[454]Adopted without a vote.

[455]See A/47/589.

[456]Adopted without a vote.

[457]A/47/585, para. 11.

[458]A/C.6/47/L.10.

[459]*Official Records of the General Assembly, Forty-sixth Session, Supplement No. 10* (A/46/10), chap. II, sect. D.

[460]Adopted without a vote.

[461]A/47/587, para. 10.

[462]*Official Records of the General Assembly, Forty-fourth Session, Supplement No. 10* (A/44/10), chap. II.

[463]Adopted without a vote.

[464]A/47/713, para. 7.

[465]Adopted without a vote.

[466]See A/47/708.

[467]A/C.5/47/14.

[468]Adopted without a vote.

[469]A/47/385.

[470]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.

[471]ILC, 79th session, 1992, *Record of Proceedings*, No. 2; No. 9; No. 15, pp. 2-3; English, French, Spanish. ILO *Official Bulletin*, vol. LXXV, 1992, Series A, No. 2, pp. 121-123.

[472]Correction of the English text only.

[473]ILO *Official Bulletin*, vol. LXXV, 1992, series A, No. 2, pp. 82-92; English, French, Spanish. Regarding preparatory work, see: *First discussion* — Protection of workers' claims in the event of the insolvency of their employer, ILC, 78th session (1991), report V(1) and report V(2); 81 and 99 pages respectively; Arabic, Chinese, English, French, German, Russian, Spanish. See also ILC, 78th session (1991), *Record of Proceedings*, No. 20; No. 26, pp. 2-6; English, French, Spanish. *Second discussion* — Protection of workers' claims in the event of the insolvency of their employer, ILC, 79th session (1992), Report IV(1), report IV(2A) and report IV(2B); 15, 97 and 26 pages respectively; Arabic, Chinese, English, French, German, Russian, Spanish. See also ILC, 79th session (1992), *Record of proceedings*, No. 25; No. 30, pp. 2-8; No. 31, pp. 3 and 16; English, French, Spanish.

[474]This report has been published as report III (Part 4) to the 79th session of the Conference and comprises two volumes: vol. A: General report and observations concerning particular countries, report III(4A), p. 578; English, French, Spanish. Vol. B: General survey of the reports on the Minimum Wage-Fixing Machinery Convention (No. 26) and Recommendation (No. 30), 1928; the Minimum Wage-Fixing Machinery (Agriculture) Convention (No. 99) and Recommendation (No. 89), 1951; and the Minimum Wage-Fixing Convention (No. 131) and Recommendation (No. 135), 1970, report III(4B), p. 213; English, French, Spanish.

[475]ILO *Official Bulletin*, vol. LXXV, 1992, series B, supplement 1.

[476]ILO *Official Bulletin*, vol. LXXV, 1992, series B, special supplement: report of the Fact-finding and Conciliation Commission on Freedom of Association concerning the Republic of South Africa. Prelude to change: Industrial relations reform in South Africa.

[477]Economic and Social Council resolution 1992/12.

[478]ILO *Official Bulletin*, vol. LXXV, 1992, series B, No. 3.

[479]Ibid., No. 1.

[480]Ibid., No. 2.

[481]Ibid., No. 3.

[482]For the text of the Constitution, see United Nations, *Treaty Series*, vol. 15, p. 295.

[483]The Pan American Sanitary Bureau is the executive arm of the Pan American Health Organization. Pursuant to an Agreement between WHO and PAHO in 1949, the Pan American Sanitary Conference (through the Directing Council of the Pan American Health Organization) and the Pan American Sanitary Bureau serve respectively as the Regional Committee and the Regional Office of WHO for the Americas within the provisions of the WHO Constitution.

[484]Bahamas, Kazakhstan and Kyrgyzstan are in the process of completing membership requirements.

[485]The text of the ICSID Convention is reproduced in *Juridical Yearbook, 1986*, p. 186.

[486]The Additional Facility Rules are reprinted in document ICSID/11 (June 1979).

[487]*Official Records of the General Assembly, Thirty-first Session, Supplement No. 17*, chap. V, sect. C.

[488]In accordance with the terms and conditions of their membership resolutions, each of these members was given the right to have their quotas increased to a specific amount in accordance with the procedures governing increases in quotas under the Ninth General Review of Quotas.

[489]United Nations, *Treaty Series*, vol. 2, p. 40.

[490]UNEP/WG.190/4.

[491]United Nations, *Treaty Series*, vol. 973, p. 3.

[492]Ibid., vol. 1110, p. 57.

[493]Ibid., vol. 1184, p. 2.

[494]IMO document 92-801-1130-2.

[495]*International Legal Materials*, vol. XII, p. 1319.

[496]Ibid., vol. XVII, p. 546.

[497]United Nations, *Treaty Series*, vol. 591, p. 265.

[498]*International Legal Materials*, vol. XXVII, p. 672.

[499]Ibid., p. 685.

[500]United Nations, *Treaty Series*, vol. 1184, p. 2.

[501]IMO document 92-801-1130-2.

[502]United Nations, *Treaty Series*, vol. 1064, p. 3.

[503]For the text of the Convention establishing the World Intellectual Property Organization, see United Nations, *Treaty Series*, vol. 828, p. 3.

[504]*Paris Convention for the Protection of Industrial Property of March 20, 1883* (as amended), official English text, WIPO Publication No. 201(E) (World Intellectual Property Organization, Geneva, 1993).

[505]United Nations, *Treaty Series*, vol. 828, p. 221.

[506]Ibid, p. 389.

[507]League of Nations, *Treaty Series*, vol. 74, p. 343.

[508]United Nations, *Treaty Series*, vol. 550, p. 45; vol. 828, p. 191; and vol. 1154, p. 89.

[509]Ibid., vol. 828, p. 435.

[510]United Kingdom *Treaty Series*, 78 (1978).

[511]United Nations, *Treaty Series*, vol. 866, p. 67.

[512]Ibid., vol. 1144, p. 3.

[513]*Treaty on the International Registration of Audiovisual Work adopted at Geneva on April 18, 1989 and Regulations as in force since February 28, 1991*, WIPO Publication No. 299(E) (World Intellectual Property Organization, Geneva, 1993).

[514]EB 92/S/R.2 and EB 92/S/R.3.

[515]United Nations, *Treaty Series*, vol. 1059, p. 91.

[516]EB 91/44/R.84.

[517]Economic and Social Council resolution 1992/53.

[518]IDB.9/18 and IDB.10/35.

[519]GC.1/INF.6.

[520]IDB.10/16/Add.1 and GC.5/3.

[521]See IDB.11/10, PBC/9/10, appendix I.

[522]Reproduced in IAEA document INFCIRC/274/Rev.1.

[523]Reproduced in IAEA document INFCIRC/335.

[524]Reproduced in IAEA document INFCIRC/336.

[525]United Nations, *Treaty Series*, vol. 1063, p. 265; the text of the Convention is also reproduced in *IAEA Legal Series*, No. 6.

[526]Reproduced in IAEA document INFCIRC/402.

[527]Reproduced in IAEA document INFCIRC/377.

[528]Reproduced in IAEA document INFCIRC/167/Add.15.

[529]Reproduced in IAEA document INFCIRC/401.

[530]Reproduced in IAEA document INFCIRC/413.

[531]Reproduced in IAEA document INFCIRC/409.

[532]Reproduced in IAEA document INFCIRC/407.

[533]Reproduced in IAEA document INFCIRC/414.

[534]Reproduced in IAEA document INFCIRC/403.

[535]Reproduced in IAEA document INFCIRC/400.

[536]The IAEA also applies safeguards to nuclear facilities in Taiwan, Province of China.