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

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

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Chapter III

GENERAL REVIEW OF THE LEGAL ACTIVITIES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

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

1. DISARMAMENT AND RELATED MATTERS[1]

(*a*) *The 1995 Review and Extension Conference of the Treaty on the Non-Proliferation of Nuclear Weapons*

With the entry into force of the 1968 Treaty on the Non-Proliferation of Nuclear Weapons on 5 March 1970,[2] a global non-proliferation regime was established, supported by the safeguards system of the International Atomic Energy Agency, which operates to prevent the diversion of nuclear material to military or other prohibited activities. Article VIII of the Treaty provides for the periodic holding of conferences of Statues parties to the Treaty to review its operation. Such conferences were held in 1975, 1980, 1985 and 1990.

During the 1995 Review and Extension Conference, three important decisions were taken without a vote. The decision to extend the duration of the Treaty indefinitely was reinforced by the other two decisions, concerning the strengthening of the review process itself.

The General Assembly, by its resolution 50/70Q of 12 December 1995,[3] took note of the work and decisions of the 1995 Review and Extension Conference of Parties to the Non-Proliferation Treaty

(*b*) *Comprehensive test-ban treaty*

As of 1995, three treaties on nuclear testing were in effect—one multilateral (Partial Test-ban Treaty of 1963)[4] and two bilateral (treaties on limitation of yields of nuclear tests for military and peaceful purposes between the former USSR and the United States).[5] None is comprehensive.

Although the Geneva multilateral negotiating body, the Conference on Disarmament, has long been involved with the issue of a test ban, it was only in 1993, owing to unprecedented improvement in the relationship between the major military Powers, that the Conference agreed to establish an ad hoc committee, which then allowed for negotiations to begin in 1994. This resulted in the first "rolling text" of a comprehensive test-ban treaty, which formed the basis for further elaboration and development. While not all the issues having to do with the scope of the future ban were resolved during 1995, three nuclear-weapon Powers agreed to a zero-yield threshold (comprehensive) test ban. The overall treaty verification regime and the architecture of each of the technologies that it would be composed of were elaborated and many organizational aspects related to implementation of the future treaty were worked out.

The General Assembly adopted three resolutions on the topic on 12 December 1995: (1) resolution 50/65[6] on the negotiations on a comprehensive nuclear-test-ban treaty; (2) resolution 50/70A[7] on nuclear testing; and (3) resolution 50/64[8] on the amendment of the Partial Test-Ban Treaty.

(*c*) *Security assurances to non-nuclear-weapon States*

Security assurances to non-nuclear-weapon States is an issue that was not fully resolved when the Non-Proliferation Treaty was concluded in 1968. During 1995, discussion of security assurances was renewed in various contexts, but especially in the framework of the preparations for the Review and Extension Conference and at the Conference itself.

With the adoption, on 11 April, of Security Council resolution 984 (1995) and the unilateral declaration of the nuclear-weapon States providing negative and positive guarantees, the question of security assurances received a new impetus.

Recognizing that these measures did not, however, fully meet the hopes of those States that sought legally binding commitments, the parties to the Non-Proliferation Treaty agreed, in their decision on principles and objectives, to consider further steps that could take the from of a multilateral, legally binding instrument. To that end, the General Assembly adopted resolution 50/68 of 12 December 1995.[9]

(*d*) *Nuclear-weapon-free zones*

The concept of a nuclear-weapon-free zone was first developed in the late 1950s as a possible complementary measure to efforts to establish a global regime for the non-proliferation of nuclear weapons. When the Non-Proliferation Treaty was negotiated, it incorporated in article VII, on the initiative of non-aligned States, a provision pertaining to nuclear-weapon-free zones: "Nothing in this Treaty affects the right of any group of States to conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories". To date, there are two such zones, in Latin America and the Caribbean,[10] and in the South Pacific,[11] and one to be established in Africa with the conclusion in 1995 of the African Nuclear-Weapon-Free-Zone Treaty, known as the Pelindaba Treaty.

The General Assembly, on 12 December 1995, adopted a number of resolutions on this topic: resolution 50/78[12] relating to the Pelindaba Treaty; resolution 50/67[13] relating to the establishment of a nuclear-weapon-free zone in South Asia; resolution 50/77[14] concerning the consolidation of the regime established by the Treaty of Tlatelolco; and resolution 50/66[13] concerning the establishment of a nuclear-weapon-free zone in the region of the Middle East.

(*e*) *Other weapons of mass destruction*

In spite of its strong resolve in the early 1990s to put an end to two categories of weapons of mass destruction, by the end of 1995, the international community had not yet reached agreement on how to strengthen the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (Biological Weapons Convention)[16] so as to enable it to respond more fully to today's instabilities. Moreover, the Convention on the Prohibition of the Development, Pro-

duction, Stockpiling and Use of Chemical Weapons and on Their Destruction (Chemical Weapons Convention),[17] confronted with parliamentary delays and lengthy technical discussions, had not yet entered into force.

On 12 December 1995, the General Assembly adopted resolutions 50/79[18] on the Biological Weapons Convention, and 50/70E[19] on the prohibition of the dumping of radioactive wastes.

(*f*) *Conventional weapons*

In October 1995, the Secretary-General published the third annual report on the Register of Conventional Arms, containing data and information on arms transfers provided by Governments for the calendar year 1994.[20] The Register was established in 1992 as a confidence-building measure designed to improve security relations among States and thus aid in preventing excessive accumulations of arms.

In his "Supplement to an Agenda for Peace", the Secretary-General coined the term "micro-disarmament" to describe disarmament in the context of weapons used in everyday conflicts.[21] The practical role the United Nations was already playing in United Nations-sponsored peacekeeping operations and post-conflict peace-building, in controlling and reducing the massive production, transfer and stockpiling of light weapons, including landmines, around the world.

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 (Convention on Certain Conventional Weapons (Inhuman Weapons Convention))[22] was concluded in 1980 and entered into force in 1983 as an "umbrella" treaty to which additional specific agreements might be attached in the form of protocols. Three such protocols exist: Protocol I on non-detectable fragments; Protocol II on mines and booby-traps; and Protocol III on incendiary weapons. During the Review Conference of the Convention in 1995, negotiations were undertaken to strengthen Protocol II, and consensus was achieved on an additional protocol on blinding laser weapons (Protocol IV), which was adopted on 13 October 1995.

A number of General Assembly resolutions in this area were adopted on 12 December 1995: resolution 50/70D[23] on transparency in armaments; resolution 50/70B[24] on small arms; resolution 50/70[25] on measures to curb the illicit transfer and use of conventional arms; resolution 50/70[26] on the Convention on Certain Conventional Weapons; and resolution 50/70O[27] on a moratorium on the export of anti-personnel land-mines.

(*g*) *Other disarmament issues*

With its resolution 50/60 of 12 December 1995,[28] the General Assembly urged all States parties to arms limitation and disarmament agreements to implement and comply with the entirety of the spirit and all provisions of such agreements; and called upon all Member States to support efforts aimed at the resolution of compliance questions by means consistent with such agreements and international law, with a view to encouraging strict observance by all parties of the provisions of arms limitation and disarmament agreements and maintaining or restoring the integrity of such agreements. Also adopted on 12 December 1995 was General Assembly resolution 50/70M,[29] on the observance of environmental norms in the drafting and implementation of agreements on disarmament and arms control.

In its resolution 50/69 of 12 December 1995,[30] the General Assembly, regretting the inability of the Conference on Disarmament to re-establish the Ad Hoc Committee on the Prevention of an Arms Race in Outer Space in 1995, requested the Conference to do so in 1996 and to consider the question of preventing an arms race in outer space.

2. OTHER POLITICAL AND SECURITY QUESTIONS

(*a*) *Membership in the United Nations*

As at the end of 1995, the number of Member States remained at 185.

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

The Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space held its thirty-fourth session at the United Nations Office at Vienna from 27 March to 7 April 1995.[31]

Regarding the agenda item on the "Question of early review and possible revision of the principles relevant to the use of nuclear power sources in outer space", the Subcommittee had decided not to re-establish its Working Group on the topic at the current session, pending the results of the work in the Scientific and Technical Subcommittee.

The Legal Subcommittee re-established its Working Group on the agenda item "Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union". At the current session of the Legal Subcommittee, the Working Group finalized the text of the questionnaire on possible legal issues with regard to aerospace objects.[32] The Subcommittee agreed that the purpose of the questionnaire was to seek the preliminary views of States members of Committee on the Peaceful Uses of Outer Space on various issues relating to aerospace objects, so as to provide a basis for the Legal Subcommittee to decided how it might continue its consideration of the agenda item.

The Legal Subcommittee also re-established its Working Group on the item "Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries:, and had before it two working papers containing respectively views of the delegations of Brazil, Chile, Colombia, Egypt, Iraq, Mexico, Nigeria, Pakistan, Philippines, Uruguay and Venezuela and the views of the delegations of France and Germany.[33]

The Committee on the Peaceful Uses of Outer Space, at its thirty-eighth session, held at the United Nations Office at Vienna from 12 to 22 June 1995, took note of the report of the Legal Subcommittee on the work of its thirty-fourth session and made recommendations concerning the agenda of the Subcommittee at its forthcoming thirty-fifth session.[34]

At its fiftieth session, by its resolution 50/27 of 6 December 1995,[35] adopted on the recommendation of the Special Political and Decolonization Committee (Fourth Committee),[36] the General Assembly endorsed the report of the Committee on the Peaceful Uses of Outer Space;[37] noted that at its thirty-fourth session, the Legal Subcommittee, in its working groups, had continued its work as mandated by the General Assembly in its resolution 49/34;[38] and invited States that had not yet become parties to the international treaties governing the uses of outer space[39] to give consideration to ratifying or acceding to those treaties.

(*c*) *Comprehensive review of the whole question of peacekeeping operations in all their aspects*

The General Assembly, by its resolution 50/30 of 6 December,[40] adopted on the recommendation of the Special Political and Decolonization Committee (Fourth Committee),[41] taking note of the section on peacekeeping of the position paper of the Secretary-General entitled "Supplement to an Agenda for Peace"[42] and of the statement by the President of the Security Council of 22 February 1995;[43] and welcoming the report of the Secretary-General on the command and control of United Nations peacekeeping operations,[44] also welcomed the report of the Special Committee on Peacekeeping Operations;[45] and endorsed the proposals, recommendations and conclusions of the Special Committee contained in paragraphs 35 to 93 of its report.

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

(*a*) *Environmental questions*

Eighteenth Session of the Governing Council of the United Nations Environment Programme[46]

The eighteenth session of the Governing Council of the United Nations Environment Programme was held at UNEP headquarters, Nairobi, from 15 to 26 May 1995.

Regarding the international conventions and protocols in the field of the environment, the Governing Council in its decision 18/25 may 1995[47] authorized the Executive Director to transmit her report on the topic,[48] together with the comments of the Governing Council thereon, to the General Assembly at its fiftieth session, in accordance with Assembly resolution 3436 (XXX) of 9 December 1975.

By its decision 18/12 of 26 May 1995, the Governing Council requested the Executive Director to invite relevant international organizations to participate in the negotiating process for the development of an internationally legally binding instrument for the application of the prior informed consent procedure for certain hazardous chemicals in international trade, and to convene, together with the Director-General of the Food and Agriculture Organization, a diplomatic conference for the purpose of adopting and signing such an instrument, preferably not later than early 1997.

Consideration by the General Assembly

At its fiftieth session, the General Assembly, by its resolution 50/110 of 20 December 1995,[49] adopted on the recommendation of the Second Committee,[50] endorsed the report of the UNEP Governing Council. The General Assembly adopted a number of other resolutions connected to environmental issues. In its resolution 50/111, also of 20 December 1995,[51] adopted on the recommendation of the Second Committee,[52] the General Assembly welcomed the results of the first meeting of the Conference of the Parties to the Convention on Biological Diversity,[53] held at Nassau from 28 November 9 December 1994, as reflected in the report of the Executive Secretary of the Convention,[54] submitted in accordance with paragraph 4 of General Assembly resolution 49/117. By its resolution 50/112 of the same date,[55] adopted on the recommendation of the Second Committee,[56] the General Assembly welcomed the signing of the 1994 United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa,[57] by a large number of States and the ratification of the Convention by a growing number of States; and decided that the Intergovernmental Negotiating Committee for the Elaboration of the Convention to Combat Desertification should continue to prepare for the first session of the Conference of the Parties to the Convention as specified in the Convention. Furthermore, by its resolution 50/115, of 20 December 1995,[58] adopted on the recommendation of the Second Committee,[59] the General Assembly took note of (a) the report of the Intergovernmental Negotiating Committee on a Framework Convention on Climate Change of 1992 on its eleventh session;[60] (b) the final reported prepared on behalf of the Committee, by its chairman, on the completion of the Committee's work;[61] and (c) the report of the Conference of the Parties to the Convention on its first session,[62] and its presentation on behalf of the President of the Conference.

(*b*) *International drug control*

Status of international instruments

During the course of 1995, two more States became parties to the 1961 Single Convention on Narcotic Drugs,[63] bringing the total number of parties to 135; eight more States became parties to the 1971 Convention on Psychotropic Substances,[64] bringing the total to 140; three more states became parties to the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961,[65] bringing the total to 102; five more States became parties to the Single Convention on Narcotic Drugs, 1961, as amended by the Protocol of 25 March 1972 amending the Single Convention on Narcotic Drugs, 1961,[66] bringing the total to 134; and 17 more states became parties to the 1995 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,[67] bring the total to 122.

Consideration by the General Assembly

By its resolution 50/148 of 21 December 1995,[68] adopted on the recommendation of the Third Committee,[69] called upon all States to adopt adequate national laws and regulations, to strengthen national judicial systems and to carry out effective drug control activities in cooperation with other States in accordance with those international instruments; and requested the United Nations International Drug Control Programme to continue to provide legal assistance to Mem-

ber States which requested it in adjusting their national laws, policies and infrastructures to implement the international drug control convention, as well as assistance in training personnel responsible for applying the new laws. By the same resolution, the General Assembly reaffirmed the importance of the Global Programme of Action[70] as a comprehensive framework for national, regional and international action to combat illicit production of, demand for and trafficking in narcotic drugs and psychotropic substances; and supported the United Nations System-wide Action Plan on Drug Abuse Control[71] as a vital tool for the coordination and enhancement of drug abuse control activities within the United Nations system, and requested that it be updated and reviewed on a biennial basis.

(*c*) *Crime prevention and criminal justice*

In this area, the General Assembly adopted, on the recommendation of the Third Committee, three resolutions on 21 December 1995.[72] By its resolution 50/145, the General Assembly took note of the report of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,[73] held at Cairo from 29 April to 8 May 1995; and endorsed the resolutions adopted by the Ninth Congress, as approved by the Commission on Crime Prevention and Criminal Justice, and also endorsed the recommendations made by the Commission, at its fourth session, and by the Economic and Social Council, at its substantive session in 1995, on the implementation of the resolutions and recommendations of the Ninth Congress, as contained in Council resolution 1995/27 of 24 July 1995. By its resolution 50/146, the General Assembly took note of the reports of the Secretary-General on the progress made in the implementation of General Assembly resolution 49/158 on strengthening the United Nations Crime Prevention and Criminal Justice Programme, particularly its technical cooperation capacity, on the implementation of resolution 49/159 on the Naples Political Declaration and Global Action Plan against Organized Transnational Crime.[75] Finally, by its resolution 50/147, the General Assembly, having considered the report of the Secretary-General,[76] commended the United Nations African Institute for the Prevention of Crime and the Treatment of Offenders for the activities it had undertaken, despite its difficulties in fulfilling its mandate, as reflected in the progress report of the Secretary-General on the activities of the United Nations Interregional Crime and Justice Research Institute and other institutes.[77]

(*d*) *Human rights questions*

(1) Status and implementation of international instruments

(i) *International Covenants on Human Rights*

In 1995, one more State became a party to the International Covenant on Economic, Social and Cultural Rights of 1966,[78] bringing the total number of States parties to 133; two more States became parties to the International Covenant on Civil and Political Rights of 1966,[79] bringing the total to 1333; six more States became parties to the Optional Protocol to the International Covenant on Civil and Political Rights of 1966,[80] bringing the total to 87; and three 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,[81] bringing the total to 29.

By its resolution 50/171 of 22 December 1995,[82] adopted on the recommendation of the Third Committee,[83] the General Assembly took note of the annual reports of the Human Rights Committee submitted to the General Assembly at its forty-ninth[84] and fiftieth sessions,[85] and of the report of the Committee on Economic, Social and Cultural Rights on its tenth and eleventh sessions.[86]

(ii) *International Convention on the Elimination of all Forms of Racial Discrimination of 1966*[87]

In 1995, four more States became parties to the International Convention, bringing the total number of States parties to 146.

By its resolution 50/137 of 21 December 1995,[88] adopted on the recommendation of the Third Committee,[89] the General Assembly encouraged the use of innovatory procedures by the Committee on the Elimination of Racial Discrimination for reviewing the implementation of the Convention in States whose reports are overdue and the formulating of concluding observations on reports of States parties to the Convention; expressed its profound concern at the fact that a number of States parties still have not fulfilled their financial obligations, shown in the report of the Seccretary-General;[90] urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee; and took note of the report of the Committee on the work of its forty-sixth and forty-seventh sessions.[91]

(iii) *International Convention on the Suppression and Punishment of the Crime of Apartheid of 1973*[92]

In 1995, no State became a party to the International Convention. The number of States parties remained at 99.

(iv) *Convention on the Elimination of All Forms of Discrimination against Women of 1979*[93]

In 1995, 13 more States became parties to the Convention, bringing the total number of States parties to 151.

By its resolution 50/202 of 22 December 1995,[94] adopted on the recommendation of the Third Committee,[95] the General Assembly, recalling its resolution 49/164 of 23 December 1994 and its decision 49/448 also of 23 December 1994, took note of the resolution regarding the amendment to article 20, paragraph 1, of the Convention, adopted by the States parties to the Convention on 22 May 1995; and urged States parties to take appropriate measures so that acceptance by a two-thirds majority of States parties can be reached as soon as possible in order for the amendment to enter into force.

(v) *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984*[96]

In 1995, seven more States became parties to the Convention, bringing the total of States parties to 185.

(vi) *Convention of the Rights of the Child*[97]

By its resolution 50/153 of 21 December 1995,[98] adopted on the recommendation of the Third Committee,[99] the General Assembly urged States parties to the Convention which had made reservations to review the compatibility of their reservations with article 51 of the Convention and other relevant rules of international law, with the aim of withdrawing them; and took note with appreciation of the report of the Committee on the Rights of the Child on its eighth session[100] and the recommendations contained therein concerning the situation of children affected by armed conflict; and urged Governments to take all necessary measures to eliminate all extreme forms of child labour, such as forced labour, bonded labour and other forms of slavery. By the same resolution, the Assembly took note of the establishment by the Economic and Social Council in its resolution 1994/9 of 22 July 1994 of an open-ended inter-sessional working group of the Commission on Human Rights responsible for elaborating, as a matter of priority and in close cooperation with the Special Rapporteur and the Committee on the Rights of the Child, guidelines for a possible draft optional protocol to the Convention on the Rights of the Child related to the sale of children, child prostitution and child pornography, as well as the basic measures needed for the prevention and eradication of those abnormal practices.

(vii) *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990*[101]

In 1995, three more States became parties to the International Convention, bringing the total number of States parties to six.

By its resolution 50/169 of 22 December 1995,[102] adopted on the recommendation of the Third Committee,[103] the General Assembly took note of the report of the Secretary-General[104] and requested him to submit to it at its fifty-first session an updated report on the status of the Convention.

(2) Effective implementation of international instruments on human rights including reporting obligations under international instruments on human rights

The General Assembly, by its resolution 50/170 of 22 December 1995,[105] adopted on the recommendation of the Third Committee,[106] welcomed the report of the persons chairing the human rights treaty bodies on their sixth meeting, held at Geneva from 18 to 22 September 1995,[107] and took note of their conclusions and recommendations. By the same resolution, the Assembly encouraged the United Nations High Commissioner for Human Rights, in accordance with his mandate, to request the independent expert to finalize his interim report on possible long-term approaches to enhancing the effective operation of the human rights treaty system;[108] and requested the High Commissioner to ensure, from within existing resources, that the revision of the United Nations *Manual on Human Rights Reporting* was completed as soon as possible.

(3) Strengthening of the rule of law

The General Assembly, by its resolution 50/179 of 22 December 1995,[109] adopted on the recommendation of the Third Committee,[110] took note of the report of the Secretary-General,[111] and of the proposals contained therein for

strengthening the programme of advisory services and technical assistance of the Center for Human Rights of the Secretariat in order to comply fully with the recommendations of the World Conference on Human Rights concerning assistance to States in strengthening their institutions in the rule of law; and affirmed that the United Nations High Commissioner for Human Rights, with the assistance of the Center, remained the focal point for coordinating system-wide attention for human rights, democracy and the rule of law.

(4) Human rights in the administration of justice

By its resolution 50/181 of 22 December 1995,[112] adopted on the recommendation of the Third Committee,[113] the General Assembly acknowledged that the administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, were essential to the full and non-discriminatory realization of human rights and indispensable to democratization processes and sustainable development; and appealed to Governments to include in their national development plans the administration of justice as an integral part of the development process and to allocate adequate resources for the provision of legal-aid services with a view to the promotion and protection of human rights. By the same resolution, the Assembly invited Governments to provide training in human rights in the administration of justice, including juvenile justice, to all judges, lawyers, prosecutors, social workers and other professionals concerned, including police and immigration officers;

and encouraged States to make use of technical assistance offered by the United Nations programmes of advisory services and technical assistance, in order to strengthen national capacities and infrastructures in the field of the administration of justice.

(5) Human rights and the electoral process

The General Assembly, by its resolution 50/172 of December 1995,[114] adopted on the recommendation of the Third Committee,[115] welcoming the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993,[116] in which the Conference had reaffirmed that the processes of promoting and protecting human rights should be conducted in conformity with the purposes and principles of the Charter, reaffirmed that it was the concern solely of people to determine methods and to establish institutions regarding the electoral process, as well as to determine the ways for its implementation according to their constitution and national legislation, and that, consequently, States should establish the necessary mechanisms and means to guarantee full and effective popular participation in those processes; and further reaffirmed that electoral assistance to Member States should be provided by the United Nations only at the request and with the consent of specific sovereign States, by virtue of resolutions adopted by the Security Council or the General Assembly in each case, in strict conformity with the principles of sovereignty and non-interference in the internal affairs of States, or in special circumstances such as cases of decolonization, or in the context of regional or international peace processes. Moreover, by its resolution 50/185, also of 22 December 1995,[117] adopted on the recommendation of the Third Committee,[118] the General Assem-

bly, recalling the Vienna Declaration and Programme of Action, especially the recognition therein that assistance provided upon the request of Governments for the conduct of free and fair elections, including assistance in the human rights aspects of elections and public information about elections of particular importance in the strengthening and building of institutions relating to human rights and the strengthening of a pluralistic civil society, and that special emphasis should be given to measures that assisted in achieving those goals,[119] took note of the report of the Secretary General on United Nations activities aimed at enhancing the effective ness of the principle of periodic and genuine elections;120 and commended the electoral assistance provided to Member States at their request by the United Nations, requested that such assistance continue on a case-by-case basis in accordance with the guidelines on electoral assistance, recognizing that the fundamental responsibility of organizing free and fair elections lay with Government, and also requested the Electoral Assistance Division of the Department of Political Affairs of the Secretariat to continue to inform Member States on a regular basis about the requests received. Responses given to those requests and the nature of the assistance provided.

(*e*) *Office of the United Nations High Commissioner for Refugees*

Status of international instruments

During 1995, three more States became parties to the Convention Relating to the Status of Refugees of 1951,[121] bringing the total number of States parties to 125; and two more States became parties to the Protocol Relating to the Status of Refugees of 1967,[122] bringing the Total to 126. The States parties to the Convention Relating to the Status of Stateless Persons of 1954[123] remained at 41; and at 16 for the Convention on the Reduction of Statelessness of 1961.[124]

Consideration by the General Assembly

The General Assembly, by its resolution 50/152 of 21 December 1995,[125] adopted on the recommendation of the Third Committee,[126] having considered the report of the Executive Committee of the Programme of the High Commissioner on the work of its forty-sixth session,[128] called upon all States to uphold asylum as an indispensable instrument for the protection of refugees, to ensure respect for the principles of refugee protection, including the fundamental principle of non-refoulement, as well as the humane treatment of asylum-seekers and refugees in accordance with internationally recognized human rights and humanitarian norms; also called for a more concerted response by the international community to the needs of internally displaced persons and, in accordance with its resolution 49/169, reaffirmed its support for the High Commissioner's efforts, on the basis of specific requests from the Secretary-General or the competent principal organs of the United Nations and with the consent of the State concerned, and taking into account the complementarities of the mandates and expertise of other relevant organizations, to provide humanitarian assistance and protection to such persons, emphasizing that activities on behalf of internally displaced persons must not undermine the institution of asylum, including the right to seek and enjoy in other countries asylum from persecution. By the same resolution, the Assembly welcomed the Platform for Action adopted at the Fourth World Conference on Women, held at Beijing from 4 to 15 September 1995,[129] particularly the strong commitment made by States

in the Platform to refugee women and other displaced women in need of international protection, and called upon the United Nations High Commissioner to support and promote efforts by States towards the development and implementation of criteria and guidelines on responses to persecution, including persecution through sexual violence or other gender-related persecution, specifically aimed at women for reasons enumerated in the 1951 Convention and 1967 Protocol relating to the status of refugees, by sharing information on States' initiatives to develop such criteria and guidelines and by monitoring to ensure their fair and consistent application by the States concerned. Furthermore, the Assembly requested the Office of the High Commissioner, in view of the limited number of States parties, actively to promote accession to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, as well as to provide relevant technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States; and called upon States to adopt nationality legislation with a view to reducing statelessness, consistent with the fundamental principles of international law, in particular by preventing arbitrary deprivation of nationality and by eliminating provisions that permit the renunciation of at nationality without the prior possession or acquisition of another nationality, while at the same time recognizing the right of States to establish laws governing the acquisition, renunciation or loss of nationality.

(*f*) *Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991*

The General Assembly, by its decision 50/408 of 7 November 1995, adopted without a vote, took note of the second annual report of the International Tribunal for the Former Yugoslavia.[130]

(*g*) *Return or restitution of cultural property to the countries of origin*

The General Assembly, by its resolution 50/56 of 11 December 1995,[131] adopted without reference to a Main Committee,[132] commended the United Nations Educational, Scientific and Cultural Organization and the Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation on the work they had accomplished, in particular through the promotion of bilateral negotiations, for the return or restitution of cultural property, the preparation of inventories of movable cultural property, the reduction of illicit traffic in cultural property and the dissemination of information to the public; and reaffirmed that the restitution to a country of its objets d'art, monuments, museum pieces, archives, manuscripts, documents and any other cultural or artistic treasures contributed to the strengthening of international cooperation and to the preservation and flowering of universal cultural values through fruitful cooperation between developed and developing countries.

4. LAW FOF THE SEA[133]

Status of the United Nations Convention on the Law of the Sea of 1982[134]

During 1995, 13 more States became parties to the Law of the Sea Convention, bringing the total number of States parties to 84.

International Tribunal for the Law of the Sea

The establishment of the Tribunal, as set out in its statute, is to commence with the election of members within six months of the date of entry into force of the Convention on the Law of the Sea. That date, however, has been deferred by a decision of the Meeting of States Parties.[135] That meeting also established several criteria relevant to the establishment and organization of the Tribunal. In accordance with the decision of the Meeting of States parties, nominations for the members of the Tribunal was opened on 16 May 1995 and all States were invited to submit nominations with the proviso that nominations by a State not party to the Convention shall not be included in the list of candidates to be circulated by the Secretary-General on 5 July 1996 unless the State concerned had deposited its instrument of ratification or accession before 1 July 1996. The nominations would close on 17 June 1996.

National legislation requirement under the Convention on the Law of the Sea

Following the previous reporting year, the trend in State practice to adopt or modify legislation in order to comply with the provisions of the Convention on the Law of the Sea had continued to slow down during 1995. Four States transmitted to the United Nations Secretariat their new legislation on maritime areas under their jurisdiction: Croatia, Finland, Germany and Ukraine.[136]

Consideration by the General Assembly

By its resolution 50/23 of 5 December 1995,[137] adopted without reference to a Main Committee,[138] the General Assembly called upon States that had not done so to become parties to the United Nations Convention on the Law of the Sea and to ratify, confirm formally or accede to the Agreement relating to the implementation of Part X of the Convention in order to achieve the goal of universal participation; and also called upon States to harmonize their national legislation with the provisions of the Convention and to ensure the consistent application of those provisions.

5. INTERNATIONAL COURT OF JUSTICE[139, 140]

Cases before the Court[141]

(a) Contentious cases before the full Court

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

Oral proceedings were held from 30 January to 16 February 1995. During 15 public sittings, the Court heard statements made on behalf of Portugal and of Australia.

At a public sitting held on 30 June 1995, the Court delivered its judgement,[142] a summary of which is given below, followed by the text of the operatives paragraph.

Procedural history

In its judgement the Court recalled that on 22 February 1991 Portugal had instituted proceedings against Australia concerning "certain activities of Australia with respect to East Timor". According to the Application Australia had, by its conduct,

> "failed to observed…the obligation to respect the duties and powers of [Portugal as] the administering Power of East Timor…and …the right of the people of East Timor to self-determination an d the related rights".

In consequence, according to the Application, Australia had "incurred international responsibility vis-à-vis both the people of East Timor and Portugal". As the basis for the jurisdiction of the Court, the Application referred to the declarations by which the two states had accepted the compulsory jurisdiction of the Court under Article 36, paragraph 2, of its Statute. In its Counter-Memorial, Australia had raised questions concerning the jurisdiction of the Court and the admissibility of the application. In the course of a meeting held by the President of the Court the Parties had agreed that those questions were inextricably linked to the merits and that they should therefore be heard and determined within the framework of the merits. The written proceedings having been completed in July 1993, hearings had been held between 30January and 16 February 1995. The judgement then set out the final submissions which had been presented by both Parties in the course of the oral proceedings.

Historical background

The Court then gave a short description of the history of the involvement of Portugal and Indonesia in the Territory of East Timor and of a number of Security Council and General Assembly resolutions concerning the question of East Timor. It further described the negotiations between Australia and Indonesia leading to the Treaty of 11 December 1989, which created a "Zone of Cooperation…in an area between the Indonesian Province of East Timor and Northern Australia".

Summary of the contentions of the Parties

The court then summarized the contentions of both Parties.

Australia's objection that there existed in reality no dispute between the Parties

The court went on to consider Australia's objection that there was in reality no dispute between itself and Portugal. Australia contended that the case as presented by Portugal was artificially limited to the question of the lawfulness of Australia's conduct, and that the true respondent was Indonesia, not Australia. Austral maintained that it was being sued in place of Indonesia. In that connection, it pointed out that Portugal and Australia had accepted the compulsory jurisdiction of the Court under Article 36 paragraph 2, of its Statute, but that Indonesia had not.

The court found in the respect that for the purpose of verifying the existence of a legal dispute in the present case, it was not relevant whether the real dispute was between Portugal and Indonesia rather than Portugal and Australia. Portugal had, rightly or wrongly, formulated complaints of fact and law against Australia which the latter had denied. By virtue of that denial there was a legal dispute.

Australia's objection that the Court was required to determine the rights and obligations of Indonesia

The Court then considered Australia's principal objection, to the effect that Portugal's Application would require the Court to determine the rights and obligations of Indonesia. Australia contended that the jurisdiction conferred upon the Court by the Parties' declarations under Article 36, paragraph 2, of the Statue would not enable the Court to act if, in order to do so, the Court were required to rule on the lawfulness of Indonesia's entry into and continuing presence in East Timor, on the validity of the 1989 Treaty between Australia and Indonesia, or on the rights and obligations of Indonesia under that Treaty, even if the Court did not have to determine its validity. In support of its argument, it referred to the Court's judgement in the case of *the Monetary Gold Removed from Rome in 1943*[143]. Portugal agreed that if its Application required the Court to decide any of these questions, the Court could not entertain it. The parties disagreed, however, as to whether the Court was required to decide any of these questions in order to resolve the dispute referred to it.

Portugal contended first that its Application was concerned exclusively with the objective conduct of Australia, which consisted in having negotiated, concluded and initiated performance of the 1989 Treaty with Indonesia, and this question was perfectly separable from any question relating to the lawfulness of the conduct of Indonesia.

Having carefully considered the Argument advanced by Portugal which sought to separate Australia's behaviour from that of Indonesia, the Court concluded that Australia's behaviour could not be assessed without first entering into the question of why it was that Indonesia could not lawfully have concluded the 1989 Treaty, while Portugal allegedly could have done so; The very subject matter of the Court's decision would necessarily be a determination

whether, having regard to the circumstances in which Indonesia entered and remained in East Timor, it could or could not have acquired the power to enter into treaties on behalf of East Timor relating to the resources of its continental shelf. The Court was not able to make such determination in the absence of the consent of Indonesia.

The Court rejected Portugal's additional argument that the rights which Australia had allegedly breached were rights *erga omnes* and that accordingly Portugal could require it, individually, to respect them regardless of whether or not another State had conducted itself in a similarly unlawful manner.

In the Court's view, Portugal's assertion that the rights of peoples to self-determination, as it evolved from the Charter and from United Nations practice, had an *erga omnes* character, was irreproachable. The principle of self-determination of peoples had been recognized by the United Nations Charter and in the jurisprudence of the Court; it was one of the essential principles of contemporary international law. However, the Court considered that the *erga omnes* character of a norm and the rule of consent to jurisdiction were two different things. Whatever the nature of the obligations invoked, the Court could not rule on the lawfulness of the conduct of a State when its judgement would imply an evaluation of thee lawfulness of the conduct of another State which was not a party to the case.

The Court went on to consider another argument of Portugal which, the Court observed, rested on the premise that the United Nations resolutions, and in particular those of the Security Council, could be read as imposing an obligation on States not to recognize any authority on the part of Indonesia over East Timor and, where the latter was concerned, to deal only with Portugal. Portugal maintained that those resolutions would constitute "givens" on the content of which the Court would not have to decide *de novo*.

The Court took note of the fact, for the two Parties, the Territory of East Timor remained a Non-Self-Governing Territory and its people had the right to self-determination, and that the express reference to Portugal as the "administering Power" in a number of the above-mentioned resolutions was not at issue between them. The Court found, however, that it could not be inferred from the sole fact that a number of resolutions of the General Assembly and the Security Council referred to Portugal as the administering Power of East Timor that they intended to establish an obligation on third States to treat exclusively with Portugal as regards the continental shelf of East Timor, Without prejudice to the question whether the resolutions under discussion could be binding in nature, the Court considered as a result that they could not be regarded as "givens" which constituted a sufficient basis for determining the dispute between the parties.

It followed from this that the Court would necessarily have had to rule upon the lawfulness of Indonesia's conduct as a prerequisite for deciding on Portugal's contention that Australia had violated its obligation to respect Portugal's status as administering Power, East Timor's status as a Non-Self-Governing Territory and the right of the people of the Territory to self-determination and to permanent sovereignty over its wealth and natural resources. Indonesia's rights and obligations would thus have constituted the very subject matter of such a judgement made in the absence of that State's consent. Such a judgement would have run directly counter to the

"'well-established principle of international law embodied in the Court's Statute, namely, that the Court can only exercise jurisdiction over a State with its consent' (*Monetary Gold Removed from Rome in 1943, Judgement, I.C.J. Reports 1954*, p.32)".

Conclusions

The Court accordingly found that it was not required to consider Australia's other objections and that it could not rule on Portugal's claims on the merits, whatever the importance of the questions raised by those claims and of the rules of international law which they brought into play.

The Court recalled in any event that it had taken note in the judgement that, for the two Parties, the Territory of East Timor remained a Non-Self-Governing Territory and its people had the right to self-determination.

Operative paragraph

"THE COURT,

By fourteen votes to two,

Finds that it cannot in the present case exercise the jurisdiction conferred upon it by the declarations made by the Parties under Article 36, paragraph 2, of its Statute to adjudicate upon the dispute referred to it by the Application of the Portuguese Republic.

IN FAVOUR: *President* Bedjaoui; *Vice-President* Schwebel; *Judges* Oda, Sir Robert Jennings, Guillaume, Shahabuddeen, Aguilar-Mawdsley, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereschetin; *Judge* ad hoc Sir Ninian Stephen;

AGAINST: *Judge* Weeramantry; *Judge* ad hoc Skubiszewski."

Judges Oda, Shahabuddeen, Ranjeva and Vereschetin appended separate opinions to the Judgement of the Court; Judge Weeramantry and Judge ad hoc Skubiszewski appended dissenting opinions.[145]

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

In letters dated 16 March 1994, addressed to the Presidents of both States, the President of the Court expressed his satisfaction and informed them that the case would be removed from the list, in accordance with the terms of the Rules of Court, as soon as the Parties had notified him of their decision to discontinue the proceedings.

At a meeting held by the President with the representatives of the Parties on 1 November 1995, the latter furnished him with an additional copy of the above-mentioned agreement as well as the text of a "Protocole d'accord avant trait à l'organization et au fonctionnement de l'agence de gestion et de coopération entre la République de Sénégal et la République de Guinée-Bissau instituée apres l'accord du 14 October 1993", done at Bissau on 12 June 1995 and signed by the two Heads of State; the representatives at the same time notified him of the decisions of their Governments to discontinue the proceedings and the President asked them to confirm that decision in writing to the Court in whatever manner they deemed most appropriate.

By a letter of 2 November 1995, the Agent of Guinea-Bissau confirmed that his Government, by virtue of the agreement reached by the two Parties on the disputed zone, had decided to discontinue the proceedings instituted by its Application dated 12 March 1991; after the Agent of Senegal, by a letter dated 6 November 1995, had confirmed that his Government "agreed to the discontinuance of proceedings", the Court, by an Order of 8 November 1995,[146] placed on record the discontinuance and directed that the case be removed from the list.

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

At the public sitting held on 15 February 1995, the Court delivered its *Judgement on Jurisdiction and Admissibility*[147] a summary of which is given below, followed by the text of the operative paragraph.

History of the case and submissions

In its judgement the Court recalled that on 8 July 1991 Qatar had filed an Application instituting proceedings against Bahrain in respect of certain disputes between the two States relating to sovereignty over the Hawar islands, sovereign rights over the shoals of Dibal and Qit'at Jaradah, and the delimitation of the maritime areas of the two States.

The court then recited the history of the case. It recalled that in its Application Qatar had founded the jurisdiction of the Court upon two agreements between the parties stated to have been concluded in December 1987 and December 1990 respectively, the subject and scope of the commitment to jurisdiction being determined by a formula proposed by Bahrain to Qatar on 26 October 1998 and accepted by Qatar in December 1990 (the "Bahraini formula"). Bahrain had contested the basis of jurisdiction invoked by Qatar.

By its judgment of 1 July 1994, the Court had found that the exchanges of letters between the King of Saudi Arabia and the Amir of Qatar dated 19 and 21 December 1987 between the King of Saudi Arabia and the Amir of Bahrain dated 19 and 26 December 1987, and the document headed "Minutes" and signed at Doha on 25 December 1990 by the Ministers for Foreign Affairs of Bahrain, Qatar and Saudi Arabia, were international agreements creating rights and obligations for the Parties; and that, by the terms of those agreements, the parties had undertaken to submit to the Court the whole of the dispute between them, as circumscribed by the Bahraini formula. Having noted that it had before it only an Application from Qatar setting out that State's specific claims in connection with that formula, the Court had decided to afford the Parties the opportunity to submit to it the whole of the dispute. It had fixed 30 November 1994 as the time limit within which the Parties were jointly or separately to take action to that end; and had reserved any other matters for subsequent decision.

On 30 November 1994, the Agent of Qatar had filed in the Registry a document entitled "Act to comply with paragraphs (3) and (4) of operative paragraph 41 of the Judgement of the Court dated 1 July 1994". In the document, the Agent had referred to "the absence of an agreement between the parties to act jointly" and had declared that he was thereby submitting to the Court "the whole of the dispute between Qatar and Bahrain, as circumscribe by the text…referred to in the 1990 Doha Minutes as the 'Bahraini formula'".

He had enumerated the subjects which, in Qatar's view, fell within the Court's jurisdiction:

> "1. The Hawar Islands, including the island of Janan;
> 2. Fasht al Dibal and Qit'at Jaradah;
> 3. The archipelagic baselines;
> 4. Zubarah;
> 5. The areas for fishing for pearls and for fishing for swimming fish and any other matters connected with maritime boundaries.
>
> It is understood by Qatar that Bahrain defines its claim concerning Zubarah as a claim of sovereignty.
>
> Further to its Application Qatar requests the Court to adjudge and declare that Bahrain has no sovereignty or other territorial right over the island of Janan or over Zubarah, and that any claim by Bahrain concerning archipelagic baselines and areas for fishing for pearls and swimming fish would be irrelevant for the purpose of maritime delimitation in the present case."

On 30 November 1994, the Registry had also received from the Agent of Bahrain a document entitled "Report of the State of Bahrain to the International Court of Justice on the attempt by the parties to implement the Court's Judgment of 1st July 1994". In that "Report", the Agent had stated that his Government had welcomed the judgement of 1 July 1994 and had understood it as confirming that the submission to the Court of the whole of the dispute" must be "consensual in character, that is a matter of agreement between Parties"." Yet, he had observed, Qatar's proposals had "taken the form of documents that could only be read as designed to fall within the framework of the maintenance of the case commenced by Qatar's Application of 8th July, 1991"; and further, Qatar had denied Bahrain "the right to describe, define or identify, in words of its own choosing, the matters which it wishes specifically to place in issue", and had opposed "Bahrain's right to include in the list of matter in dispute the item of 'sovereignty over Zubarah'".

Bahrain had submitted observations on Qatar's Act to the Court on 5 December 1994. It had said that

> "the Court did not declare it in its Judgement of 1st July, 1994 that it had jurisdiction in the Case brought before it by virtue of Qatar's unilateral application of 1991. Consequently, if the Court did not have jurisdiction at that time, then the Qatari separate Act of 30th November, even when considered in the light of the Judgement, cannot create that jurisdiction or effect a valid submission in the absence of Bahrain's consent."

A copy of each of the documents produced by Qatar and Bahrain had been duly transmitted to the other Party.

Jurisdiction of the Court

The Court began by referring to the negotiation held between the Parties following the Court's Judgement of 1 July 1994, to the "Act" addressed by Qatar to the Court on 30 November 1994, and to the comments made thereon by Bahrain on 5 December 1994.

The court then recalled that, in its Judgement of 1 July 1994, it had reserved for subsequent decision all such matters as had not been decided in that judgement. Accordingly, it was bound to rule on the objections of Bahrain in its decision on its jurisdiction to adjudicate upon the dispute submitted to it and on the admissibility of the Application.

Interpretation of paragraph 1 of the Doha Minutes

Paragraph 1 of the Doha Minutes placed on record the agreement of the Parties to "*reaffirm what was agreed previously between [them]*".

The Court proceeded, first of all to define the precise scope of the commitments which the Parties had entered into in 1987 and agreed to reaffirm in the Doha Minutes of 1990. In this regard, the essential texts concerning the jurisdiction of the Court were points 1 and 3 of the letters of 19 December 1987. By accepting those points, Qatar and Bahrain had agreed, on the one had, that:

> "All the disputed matters shall be referred to the International Court of Justice, at The Hague, for a final ruling binding upon both parties, who shall have to execute its terms"

and, on the other, that a Tripartite Committee be formed

> "for the purpose of approaching the International Court of Justice, and satisfying the necessary requirements to have the dispute submitted to the Court in accordance with its regulations and instructions so that a final ruling, binding upon both parties, be issued".

Qatar maintained that, by that undertaking, the Parties had clearly and unconditionally conferred upon the Court jurisdiction to deal with the disputed matters between them. The work of the Tripartite Committee had been directed solely to considering the procedures to be followed to implement the commitment thus made to seise the Court. Bahrain on the contrary maintained that the texts in question expressed only the Parties consent in principle to a seisin of the Court, but that such consent had clearly been subject to the conclusion of a Special Agreement marking the end of the work of the Tripartite Committee.

The Court could not agree with Bahrain in this respect. Neither in point 1 nor in point 3 of the letters of 19 December 1987 could it find the conditions alleged by Bahrain to exist. It was indeed apparent from point 3 that the Parties did not envisage seising the Court without prior discussion, in the Tripartite Committee, of the formalities required to do so. But the two States had nonetheless agreed to submit to the Court all the disputed matters between them, and the Committee's only function had been to ensure that this commitment was given effect, by assisting the Parties to approach the Court and to seise it in the manner laid down by its Rules. By the terms of point 3, neither of the particular modalities of seisin contemplated by the Rules of Court had either been favoured or rejected.

The Tripartite Committee had met for the last time in December 1988, without the Parties having reached agreement either as to the "disputed matters" or as to the "necessary requirements to have the dispute submitted to the Court". It had ceased its activities at the instance of Saudi Arabia and without

opposition from the Parties. As the Parties had not, at the time of signing the Doha Minutes in December 1990, asked to have the Committee re-established, the Court considered that paragraph 1 of those Minutes could only be understood as contemplating the acceptance by the Parties of point 1 in the letters from the King of Saudi Arabia dated 19 December 1987 (the commitment to submit to the Court "all the disputed matters" and to comply with the judgment to be handed down by the court), to the exclusion of point 3 in those same letters.

Interpretation of paragraph 2 of the Doha Minutes

The Doha Minutes had not only confirmed the agreement reached by the Parties to submit their dispute to the Court, but had also represented a decisive step along the way towards a peaceful solution of that dispute, by settling the controversial question of the definition of the "disputed matters". This was one of the principal objects of paragraph 2 of the Minutes which, in the translation that the Court was to use for the purposes of the 1995 Judgment, read as follows:

> "(2) The Good offices of the Custodian of the Two Holy Mosques, King Fahd Ben Abdul Aziz, shall continue between the two countries until the month of Shawwal 1411 A.H., corresponding to May 1991. Once that period has elapsed, the two parties may submit the matter to the International Court of Justice in accordance with the Bahraini formula, which has been accepted by Qatar, and with the procedures consequent on it. The good offices of the Kingdom of Saudi Arabia will continue during the period when the matter is under arbitration".

Paragraph 2 of the Minutes, which had formally placed on record Qatar's acceptance of the Bahraini formula, had put an end to the persistent disagreement of the Parties as to the subject of the dispute to be submitted to the Court. The agreement to adopt the Bahraini formula had shown that the Parties were at one on the extent of the Court's jurisdiction. The formula had thus achieved its purpose: it set, in general but clear terms, the limits of the dispute the Court would henceforth have to entertain.

The Parties nonetheless continued to differ on the question of the method of seisin. For Qatar, paragraph 2 of the Minutes had authorized a unilateral seisin of the Court by means of an application filed by one or the other Party, whereas for Bahrain, on the contrary, that text had only authorized a joint seisin of the Court by means of a special agreement.

The parties had devoted considerable attention to the meaning which, according to them, should be given to the expression "*al-tarafan*" (Qatar: "the parties;" Bahrain: "the two parties") as used in the second sentence of the original Arabic text of paragraph 2 of the Doha Minutes. The Court observed that the dual form in Arabic served simply to express the existence of two units (the parties or the two parties), so what had to be determined was whether the words, when used in the Minutes in the dual form, had an *alternative* or a *cumulative* meaning: in the first case, the text would have left each of the Parties with the option of acting unilaterally, and in the second, it would have implied that the question be submitted to the Court by both Parties acting in concert, either jointly or separately.

The court first analysed the meaning and scope of the phrase "Once that period has elapsed, the two parties may submit the matter to the International Court of Justice". It noted that the use in the phrase of the verb "may" suggested in the first place, and in its most material sense, the option or right for the Parties to seise the Court. In fact, the Court had difficulty in seeing why the 1990 Minutes, the object and purpose of which were to advance the settlement of the dispute by giving effect to the formal commitment of the Parties to refer it to the Court, would have been confined to opening up for them a possibility of joint action which not only had always existed but, moreover, had proved to be ineffective. On the contrary, the text assumed its full meaning if it was taken to be aimed, for the purpose of accelerating the dispute settlement process, at opening the way to a possible unilateral seisin of the Court in the event that the mediation of Saudi Arabia had failed to yield a positive result by May 1991. The Court also looked into the possible implications, with respect to the latter interpretation, of the conditions in which the Saudi mediation was to go forward, according to the first and third sentences of paragraph 2 of the Minutes. The Court further noted that the second sentence could be read as affecting the continuation of the mediation. On that hypothesis, the process of mediation would have been suspended in May 1991 and could not have resumed prior to the seisin of the Court. For the Court, it could not have been the purpose of the Minutes to delay the resolution of the dispute or to make it more difficult. From that standpoint, the right of unilateral seisin was the necessary complement to the suspension of mediation.

The Court then applied itself to an analysis of the meaning and scope of the terms "in accordance with the Bahraini formula, which has been accepted by Qatar, and with the procedures consequent on it", which concluded the second sentence of paragraph 2 of the Doha Minutes. The Court had to ascertain whether, as was maintained by Bahrain, that reference to the Bahraini formula and, in particular, to the "procedures consequent on it", had the aim and effect of ruling out any unilateral seisin. The Court was aware that the Bahraini formula had originally been intended to be incorporated into the text of a special agreement. However it considered that the reference to that formula in the Doha Minutes had to be evaluated in the context of those Minutes rather than in the light of the circumstances in which that formula had originally been conceived. If the 1990 Minutes referred back to the Bahraini formula it was in order to determine the subject-matter of the dispute which the Court would have to entertain. But the formula was no longer an element in a special agreement, which moreover never saw the light of day; it henceforth became part of a binding international agreement which itself determined the conditions for seisin of the Court. The Court noted that the very essence of that formula was, as Bahrain had clearly stated to the Tripartite Committee, to circumscribe the dispute with which the Court would have to deal, while leaving it to each of the Parties to present its own claims within the framework thus fixed. Given the failure to negotiate a special agreement, the Court took the view that the only procedural implication of the Bahraini formula on which the Parties could have reached agreement in Doha was the possibility that each of them might submit distinct claims to the Court.

Consequently, it seemed to the Court that the text of paragraph 2 of the Doha Minutes interpreted in accordance with the ordinary meaning to be given to its terms in their context and in the light of the object and purpose of the said Minutes, allowed the unilateral seisin of the Court.

In these circumstances, the Court did not consider it necessary to resort to supplementary means of interpretation in order to determine the meaning of the Doha Minutes but had recourse to them in order to seek a possible confirmation of its interpretation of the text. Neither the *travaux préparatoires* of the Minutes, however, nor the circumstances in which the Minutes had been signed, could, in the Court's view, provide it with conclusive supplementary elements for that interpretation.

Links between jurisdiction and seisin

The Court still had to examine one other argument. According to Bahrain, even if the Doha Minutes were to be interpreted as not ruling out unilateral seisin, that would still not authorize one of the Parties to seise the Court by way of an Application. Bahrain argued, in effect, that seisin was not merely a procedural matter but a question of jurisdiction; that consent to unilateral seisin was subject to the same conditions as consent to judicial settlement and must therefore be unequivocal and indisputable; and that, where the texts were silent, joint seisin had by default to be the only solution.

The Court considered that, as an act instituting proceedings, seisin was a procedural step independent of the basis of jurisdiction invoked. However, the Court was unable to entertain a case so long as the relevant basis of jurisdiction had not been supplemented by the necessary act of seisin: from that point of view, the question of whether the Court was validly seised appeared to be a question of jurisdiction. There was not doubt that the Court's jurisdiction could only be established on the basis of the will of the Parties, as evidenced by the relevant texts. However, in interpreting the text of the Doha Minutes, the Court had reached the conclusion that it allowed a unilateral seisin. Once the Court had been validly seised, both Parties were bound by the procedural consequences which the Statute and the Rules made applicable to the method of seising employed.

In its Judgement of 1 July 1994, the Court had found that the exchanges of letter of December 1987 and the Minutes of December 1990 were international agreements creating rights and obligations for the Parties, and that by the terms of those agreements the Parties had undertaken to submit to it the whole of the dispute between them. In the 1995 Judgment, the Court noted that, at Doha, the Parties had reaffirmed their consent to its jurisdiction and determined the subject matter of the dispute in accordance with the Bahraini formula; it had further noted that the Doha Minutes allowed unilateral seisin. The Court considered, consequently, that it had jurisdiction to adjudicate upon the dispute.

Admissibility

Having thus established its jurisdiction, the Court still had to deal with certain problems of admissibility, as Bahrain had reproached Qatar with having limited the scope of the dispute only to those questions set out in Qatar's Application.

In its Judgement of 1 July 1994, the Court had decided:

> "to afford the Parties the opportunity to ensure the submission to the Court of the entire dispute as it is comprehended within the 1990 Minutes and the Bahraini formula, to which they have both agreed".

Qatar, by a separate act of 30 November 1994, had submitted to the Court "the whole of the dispute between Qatar and Bahrain, as circumscribed" by the Bahraini formula (see above). The terms used by Qatar had been similar to those used by Bahrain in several draft texts except in so far as those texts related to *sovereignty* over the Hawar islands and *sovereignty* over Zaharah. It appeared to the Court that the form of words used by Qatar accurately described the subject of the dispute. In the circumstances, the Court, while regretting that no agreement could be reached between the Parties as to how it should be presented, concluded that it was now seised of the whole of the dispute, and that the Application of Qatar was admissible.

Operative paragraph

"The Court,

(1) By 10 votes to 5,

Finds that it has jurisdiction to adjudicate upon the dispute submitted to it between the State of Qatar and the State of Bahrain;

In Favour: *President* Bedjaoui; *Judges* Sir Robert Jennings, Guillaume, Aguilar-Mawdsley, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, *Judge* ad hoc Torres Bernárdez;

Against: *Vice-President* Schwebel; *Judges* Oda, Shanhabuddeen, Koroma; *Judge* ad hoc Valticos.

(2) By 10 votes to 5,

Finds that the Application of the State of Qatar as formulated on 30 November 1994 is admissible.

In Favour: *President* Bedjaoui; *Judges* Sir Robert Jennings, Guillaume, Aguilar-Mawdsley, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, *Judge* ad hoc Torres Bernárdez;

Against: *Vice-President* Schwebel; *Judges* Oda, Shanhabuddeen, Koroma; *Judge* ad hoc Valticos."

Vice-President Schwebel, Judges Oda, Shanhabuddeen and Koroma, Judge ad hoc Valticos appended dissenting opinions to the judgment.[148]

Judge ad hoc Valticos resigned as of the end of the jurisdiction and admissibility phase of the proceedings.

By an Order of 28 April 1995,[149] the Court, having ascertained the views of Qatar and having given Bahrain an opportunity of stating its views, fixed 29 February 1996 as the time limit for the filing by each of the Parties of a Memorial on the merits. On the request of Bahrain, and after the views of Qatar had been ascertained, the Court, by an Order of 1 February 1996,[150] extended that time limit to 30 September 1996.

4. *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom) and Questions of Interpretation and Application of the 19971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America)*

On 16 and 20 June 1995 respectively, the United Kingdom of Great Britain and Northern Ireland and the United States of America filed preliminary objections to the jurisdiction of the Court to entertain the Applications of the Libyan Arab Jamahiriya.

By virtue of Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits are suspended when preliminary objections are filed; proceedings have then to be organized for the consideration of those preliminary objections in accordance with the provisions of the Article.

After a meeting had been held, on 9 September 1995, between the President of the Court and the Agents of the Parties to ascertain the latters' views, the Court, by Orders of 22 September 1995[151] fixed, in each case, 22 December 1995 as the time lime within which the Libyan Arab Jamahiriya might present a written statement of its observations and submissions on the preliminary objections raised by the United Kingdom and the United States respectively. Libya filed such statements within the prescribed time limits.

5. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*

By an Order of 21 March 1995,[152] the President of the Court, upon a request of the Agent of Yugoslavia and after the views of Bosnia and Herzegovina had been ascertained, extended to 30 June 1995 the time limit for the filing of the Counter-Memorial of Yugoslavia.

On 26 June 1995, within the extended time limit for the filing of its Counter-Memorial, Yugoslavia filed certain preliminary objections. The objections related, firstly, to the admissibility of the Application and, secondly, to the jurisdiction of the Court to deal with the case.

By virtue of Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits are suspended when preliminary objections are filed; proceedings have then to be organized for the consideration of those preliminary objections in accordance with the provision of that Article.

By an Order of 14 July 1995,[153] the President of the Court, taking into account the views expressed by the Parties, fixed 14 November 1995 as the time limit within which the Republic of Bosnia and Herzegovina might present a written statement of its observations and submissions on the preliminary objections raised by the Federal Republic of Yugoslavia. Bosnia and Herzegovina filed such a statement within the prescribed time limit.

6. *Gabcíkovo-Nagymaros Project (Hungary/Slovakia)*

Slovakia chose Mr. Krzysztof J. Skubiszewski to sit as judge *ad hoc*.

By an order of 20 December 1994,[154] the President of the Court, taking into account the views of the Parties, fixed 20 June 1995 as the time limit for the filing of a Reply by each of the Parties. Those Replies were filed within the prescribed time limit.

7. *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*

By an Order of 16 June 1994,[155] the Court, seeing no objection to the suggested procedure, fixed 16 March 1995 as the time limit for filing the Memorial of Cameroon, and 18 December 1995 as the time limit for filing the Counter-Memorial of Nigeria. The Memorial was filed within the prescribed time limit.

On 13 December 1995, within the time limit for the filing of its Counter-Memorial, Nigeria filed certain preliminary objections to the jurisdiction of the Court and to the admissibility of the claims of Cameroon.

By virtue of article 79, paragraph 3, of the Rules of Court, the proceedings on the merits are suspended when preliminary objections are filed; proceedings have then to be organized for the consideration of those preliminary objections in accordance with the provisions of that Article.

8. *Fisheries Jurisdiction (Spain v. Canada)*

On 28 March 1995, the Kingdom of Spain filed in the Registry of the Court an Application instituting proceedings against Canada with respect to a dispute relating to the Canadian Coastal Fisheries Protection Act, as amended on 12 May 1994, and to the implementing regulations of that Act, as well as to certain measures taken on the basis of that legislation, more particularly the boarding on the high seas, on 9 March 1995, of a fishing boat, the *Estai*, sailing under the Spanish flag.

The Application indicated, *inter alia*, that by the amended Act "an attempt was made to impose on all persons on board foreign ships a broad prohibition on fishing in the NAFO [Northwest Atlantic Fisheries Organization] Regulatory Area—that is, on the high seas, outside Canada's exclusive economic zone"; that the Act "expressly permits (art.8) the use of force against foreign fishing boats in the zones that article 2.1 unambiguously terms the 'high seas'"; that the rules of application of 25 May 1994 provided, in particular, for "the use of force by fishery protection officers against the foreign fishing boats covered by those regulations… which infringe their mandates in the zone of the high seas within the scope of those regulations"; and that the implementing regulations of 3 March 1995 "expressly permits […] such conduct as regards Spanish and Portuguese ships on the high seas".

The Application alleged the violation of various principles and norms of international law and stated that there was a dispute between the Kingdom of Spain and Canada which, going beyond the framework of fishing, seriously affected the very principle of the freedom of the high seas and, moreover, implied a very serious infringement of the sovereign rights of Spain.

As a basis of the Court's jurisdiction, the Applicant referred to the declarations of Spain and of Canada made in accordance with Article 36, paragraph 2, of the Statute of the Court.

In that regard, the Application specified that:

> "The exclusion of the jurisdiction of the Court in relation to disputes which may arise from management and conservation measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area and the enforcement of such measures (Declaration of Canada, para. 2(*d*), introduced as recently as 10 May 1994, two days prior to the amendment of the Coastal Fisheries Protection Act), does not even partially affect the present dispute. Indeed, the Application of the Kingdom of Spain does not refer exactly to the disputes concerning those measures, but rather to their origin, to the Canadian legislation which constitutes their frame of reference. The Application of Spain directly attacks the title asserted to justify the Canadian measures and their actions to enforce them, a piece of legislation which going a great deal further than the mere management and conservation of fishery resources, is in itself an internationally wrongful act of Canada, as it is contrary to the fundamental principles and norms of international law; a piece of legislation which for that reason does not fall exclusively within the jurisdiction of Canada either, according to its own Declaration (para.2 (*c*) thereof). Moreover, only as from 3 March 1995 has an attempt been made to extend that legislation, in a discriminatory manner, to ships flying the flags of Spain and Portugal, which has led to the serious offences against the International law set forth above".

While expressly reserving the right to modify and extend the terms of the Application, as well as the ground involved, and the right to request the appropriate provisional measure, the Kingdom of Spain requested:

> "(A) That the Court declare that the legislation of Canada, in so far as it claims to exercise a jurisdiction over ships flying a foreign flag on the high seas, outside the exclusive economic zone of Canada, is not opposable to the Kingdom of Spain;
>
> (B) That the Court adjudge and declare that Canada is bound to refrain from any repetition of the acts complained of, and to offer to the Kingdom of Spain the reparation that is due, in the form of an indemnity the amount of which must cover all the damages and injuries occasioned; and
>
> (C) That, consequently, the Court declare also that the boarding on the high seas, on 9 March 1995, of the ship *Estai* flying the flag of Spain, and the measures of coercion and the exercise of jurisdiction over that ship and over its captain constitute a concrete violation of the aforementioned principles and norms of international law".

By a letter dated 21April 1995, the Ambassador of Canada to the Netherlands informed the Court that, in the view of his Government, the Court manifestly lacked jurisdiction to deal with the Application filed by Spain by reason of paragraph 2(*d*) of the Declaration, dated 10 May 1994, whereby Canada accepted the compulsory jurisdiction of the Court.

Taking into account an agreement concerning the procedure reached between the Parties at a meeting with the President of the Court, held on 27 April 1995, the President, by an Order of 2 May 1995,[156] decided that the written proceedings should first be addressed to the question of the jurisdiction of the Court to entertain the dispute and fixed 29 September 1995 as the time limit for the filing of the Memorial of the Kingdom of Spain and 29 February 1996 for the filing of the Counter-Memorial of Canada. The Memorial and Counter-Memorial were filed within the prescribed time limits.

9. *Request for an examination of the situation in accordance with paragraph 63 of the Court's Judgement of 20 December 1974 in the Nuclear Tests (New Zealand v. France) case*

On 21 August 1995, New Zealand submitted to the Court a Request for an Examination of the Situation "arising out of a proposed action announced by France which will, if carried out, affect the basis of the Judgment rendered by the Court on 20 December 1974 in the *Nuclear Tests (New Zealand v. France*) case". The Request referred to a media statement of 13 June 1995 by President Chirac "which said that France would conduct a final series of eight nuclear weapons tests in the South Pacific starting in September 1995". New Zealand stated that the request was made "under the right granted to New Zealand in paragraph 63 of the Judgment of 20 December 1974".

Paragraph 63 reads as follows:

> "Once the Court has found that a State has entered into a commitment concerning its future conduct it is not the Court's function to contemplate that it will not comply with it. However, the Court observes that if the basis of this Judgment were to be affected, the Applicant could request an examination of the situation in accordance with the provisions of the Statute; the denunciation by France, by letter dated 2 January 1974, of the General Act for the Pacific Settlement of International Disputes, which is relied on as a basis of jurisdiction in the present case, cannot constitute by itself an obstacle to the presentation of such a request".

New Zealand asserted that the rights for which it sought protection "all fall within the scope of the rights invoked by New Zealand in paragraph 28 of the 1973 Application" in the above-mentioned case, but that at the present time New Zealand sought

> "recognition only of those rights that would be adversely affected by entry into the marine environment of radioactive material in consequence of the further tests to be carried out at Mururoa or Fangataufa Atolls, and of its entitlement to the protection and benefit of a properly conducted Environmental Impact Assessment".

New Zealand asked the Court to adjudge and declare:

"(i) that the conduct of the proposed nuclear tests will constitute a violation of the rights under international law of New Zealand, as well as of other States;

further or in the alternative;

(ii) that it is unlawful for France to conduct such nuclear testes before it has undertaken an Environmental Impact Assessment according to accepted international standards. Unless such an assessment establishes that the tests will not give rise, directly or indirectly, to radioactive contamination of the marine environment the rights under international law of New Zealand, as well as the rights of other States, will be violated".

On the same day, New Zealand, referring to the Court's Order of 22 June 1973 indicating interim measures of protection and to the Court's Judgment of 20 December 1974 in the above-mentioned case, requested the Court, in accordance with Article 33, paragraph 1, of the General Act for the Pacific Settlement of Disputes, 1928, and Article 41 of the Statute of the Court, to indicate the following further provisional measures:

"(1) That France refrain from conducting any further nuclear tests at Mururoa and Fangataufa Atolls;

(2) That France undertake an environmental impact assessment of the proposed nuclear tests according to accepted international standards and that, unless the assessment establishes that the tests will not give rise to radioactive contamination of the marine environment, France refrain from conducting tests;

(3) That France and New Zealand ensure that no action of any kind is taken which might aggravate or extend the dispute submitted to the Court or prejudice the rights of the other Party in respect of the carrying out of whatever decisions the Court may give in this case".

New Zealand chose Sir Geoffrey Palmer to sit as judge *ad hoc*.

Applications for permission to intervene were submitted by Australia, Samoa, Solomon Islands, the Marshall Islands and the Federated States of Micronesia, while the last four States also made declarations on intervention.

At the invitation of the President of the Court, informal aides-mémoires regarding the legal nature of the New Zealand Requests and of their effects were presented by New Zealand and France. Public sittings to hear the oral arguments of the two States on the question, "Do the Requests submitted to the Court by the Government of New Zealand on 21 August 1995 fall within the provisions of paragraph 63 of the Judgment of the Court on 20 December 1974 in the case concerning *Nuclear Tests (New Zealand v. France)*", were held on 11 and 12 September 1995.

At a public sitting held on 22 September 1995, the President of the Court read the Order,[157] a summary of which is given below, followed by the text of the operative paragraph:

In its Order the Court first recalled the history of the proceedings as set out here above. It observed that New Zealand's "Request for an Examination of the Situation" submitted under paragraph 63 of the 1974 Judgment, even if it was disputed *in limine* whether it fulfilled the conditions set in that paragraph, should nonetheless be the object of entry in the General List of the Court for the sole purpose of enabling the latter to determine whether those conditions were fulfilled; and that it had accordingly instructed the Registrar.

The Court began its reasoning by citing paragraph 63 of the Judgment of 20 December 1974, which provides:

> " Once the Court has found that a State has entered into a commitment concerning its future conduct it is not the Court's function to contemplate that it will not comply with it. However, the Court observes that if the basis of this judgment were to be affected, the Applicant could request an examination of the situation in accordance with the provisions of the Statue; the denunciation by France, by letter dated 2 January 1974, of the General Act for the Pacific Settlement of International Disputes, which is relied on as a basis of jurisdiction in the present case, cannot constitute by itself an obstacle it the presentation of such a request".

It then indicated that the following question had to be answered *in limine*: "Do the Requests submitted to the Court by the Government of New Zealand on 21 August 1995 fall within the provisions of paragraph 63 of the Judgment of the Court of 20 December 1974 in the case concerning *Nuclear Tests (New Zealand v. France)*/"; and that the present proceedings had consequently been limited to that question. The question had two elements; one concerned the courses of procedure envisaged by the Court in paragraph 63 of its 1974 Judgment, when it stated that "the Application could request an examination of the situation *in accordance with the provisions of the Statute*"; the other concerned the question whether the "basis" of that judgment had been "affected" within the meaning of paragraph 63 thereof.

As to the first element of the question before it, the Court recalled that New Zealand expressed the following view:

> "paragraph 63 is a mechanism enabling the continuation or the resumption of the proceedings of 1973 and 1974. They were not fully determined. The Court foresaw that the course of future events might in justice require that New Zealand should have that opportunity to continue its case, the progress of which was stopped in 1974. And to this end in paragraph 63 the Court authorized these derivative proceedings… the presentation of a Request for such an examination is to be part of the same case and not of a new one".

New Zealand added that paragraph 63 could only refer to the procedure applicable to the examination of the situation once the request was admitted; it furthermore explicitly stated that it was not seeking an interpretation of the 1974 Judgment under Article 60 of the Statute, nor a revision of that judgement under Article 61.

France, for its part, stated as follows:

> "As the court itself has expressly stated, the possible steps to which it alludes are subject to compliance with the "provisions of the Statute'. … The French Government incidentally further observes that, even had the Court not so specified, the principle would nevertheless apply: any activity of the Court is governed by the Statue, which circumscribes the powers of the Court and prescribes the conduct that States must observe without it being possible for them to depart therefrom, even by agreement …; as a result and *a fortiori*, a State cannot act unilaterally before the Court in the absence of any basis in the Statute."

> "Now New Zealand does not invoke any provision of the Statute and could not invoke any that would be capable of justifying its procedure in law. It is not a request for interpretation or revision…, nor a new Application, whose entry in the General List would, for that matter be quite out of the question…"

The Court observed that in expressly laying down, in paragraph 63 of its Judgment of 20 December 1974, that, in the circumstances set out therein, "the Applicant could request an examination of the situation in accordance with the provisions of the Statue", the Court could not have intended to limit the Applicant's access to legal procedures such as the filing of a new application (Statute, Art,. 40, para.1), a request for interpretation (Statute, Art. 60) or a request for revision (Statute, Art 61), which would have been open to it in any event; by inserting the above-mentioned words in paragraph 63 of its judgment, the Court did not exclude a special procedure, in the e event that the circumstances defined in that paragraph were to arise, in other words, circumstances which "affected" the "basis" of the judgement. The Court went on to point out that such a procedure appeared to be indissociably lined, under that paragraph, to the existence of those circumstances; and that if the circumstances in question did not arise, that special procedure was not available.

The Court hen considered that it should determine the second element of the question raised, namely whether the basis of its Judgement of 20 December 1974 had been affected by the facts to which New Zealand referred and whether the Court might consequently proceed to examine the situation as contemplated by paragraph 63 of that judgment; to that end, it first had to define the basis of that Judgment by an analysis of its text. The Court observed that, in 1974, it took as the point of departure of its reasoning the Application filed by New Zealand in 1973; that in its Judgment of 20 December 1974 it affirmed that:

> "in the circumstances of the present case, as already mentioned, the Court must ascertain the true subject of the dispute, the object and purpose of the claim … In doing so it must take into account not only the submission, but the Application as a whole, the arguments of the Applicant before the Court, and other documents referred to…"[158]

Referring, among other things, to a statement made by Prime Minister of New Zealand, the Court found that:

> "for purposes of the Application, the New Zealand claim is to be interpreted as applying only to atmospheric tests, not to any other form of testing, and as applying only to atmospheric tests so conducted as to give rise to radioactive fallout on New Zealand territory".[159]

In making, in 1974, this finding and the one in the *Nuclear Tests (Australia v. France)* case (for the Court, the two cases appeared identical as to their subject matter which concerned exclusively atmospheric tests), the Court had addressed the question whether New Zealand, when filing its 1973 Application might have had broader objectives than the cessation of atmospheric nuclear tests—the "primary concern" of the Government of New Zealand, as it now put it. The Court concluded that it could not now reopen this question since its current task was limited to an analysis of the Judgment of 1974.

The Court recalled that moreover it had taken note, at that time, of the communiqué issued by the Office of the President of the French Republic on 8 June 1974, stating that:

> "in view of the stage reached in carrying out the French nuclear defence programme France will be in a position to pass on to the state of underground explosions as soon as the series of tests planned for this summer iscompleted"[160]

and to other official declaration of the French authorities on the same subject, made publicly outside the Court and *erga omnes*, and expressing the French Government's intention to put an end to its atmospheric test; that, comparing the undertaking entered into by France with the claim asserted by New Zealand, it had bound that it faced "a situation in which the objective of the Applicant [had] in effect been accomplished"[161] and accordingly had indicated that "the object of the claim having clearly disappeared, there is nothing on which to give judgment".[162] The Court concluded that the basis of the 1974 judgment was consequently France's undertaking not to conduct any further atmospheric nuclear tests; that it was only, therefore, in the event of a resumption of nuclear tests in the atmosphere that that basis of the judgment would have been affected; and that that hypothesis had not materialized.

The Court observed further that in analysing its Judgment of 1974, it had reached the conclusion that that judgment dealt exclusively with atmospheric nuclear testes; that consequently, it was not possible for the Court now to take into consideration questions relating to underground nuclear tests; and that the Court could not, therefore, take account of the arguments derived by New Zealand, on the one hand from the conditions in which France had conducted underground nuclear tests since 1974, and on the other from the development of international law in recent decades—and particularly the conclusion on 25 November 1986, of the Noumea Convention—any more than of the arguments derived by France from the conduct of the New Zealand Government since 1974. It finally observed that its Order was without prejudice to the obligation of States to respect and protect the natural environment, obligations to which both New Zealand and France had in the present instance reaffirmed their commitment.

The Court therefore found that basis of the 1974 Judgment had not been affected; that New Zealand's request did not therefore fall within the provisions of paragraph 63 of that judgment; and that that Request had consequently to be dismissed. It also pointed out that following its Order, the Court had instructed the Registrar to remove that Request from the General List as of 22 September 1995.

Finally the Court indicated that it likewise had to dismiss New Zealand's "Further Request for the Indication of Provisional Measures" as well as the application s for permission to intervene submitted by Australia, Solomon Islands, the Marshall Islands and the Federated States of Micronesia and the declarations of intervention made by the last four States—all of which were proceedings incidental to New Zealand's main request..

Operative paragraph

"Accordingly,

THE COURT,

(1) By twelve votes to three,

Finds that the "Request for an Examination of the Situation' in accordance with paragraph 63 of the Judgment of the Court of 20 December 1974 in the *Nuclear Tests (New Zealand v. France)* case, submitted by New Zealand on 21 August 1995, does not fall within the provisions of the said paragraph 63 and must consequently be dismissed;

IN FAVOUR: *President* Bedjaoui; *Vice-President* Schwebel; *Judges* Oda, Guilllaume, Shanhabuddeen, Renjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Ferrari Bravo, Higgins;

AGAINST: *Judges* Weeramantry, Koroma; *Judge* ad hoc Sir Geoffrey Palmer;

(2) By twelve votes to three,

Finds that the "Further Request for the Indication of Provisional Measures' submitted by New Zealand on the same date must be dismissed;

IN FAVOUR: *President* Bedjaoui; *Vice-President* Schwebel; *Judges* Oda, Guilllaume, Shanhabuddeen, Renjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Ferrari Bravo, Higgins;

AGAINST: *Judges* Weeramantry, Koroma; *Judge* ad hoc Sir Geoffrey Palmer;

(3) By twelve votes to three,

Finds that the 'Application for Permission to Intervene' submitted by Australia on 23 August 1995, and the 'Applications for Permission to Intervene' and 'Declarations of Intervention' submitted by Samoa and Solomon Islands on 24 August 1995, and by the Marshal Islands and the Federated States of Micronesia on 25 August 1995, must likewise be dismissed.

IN FAVOUR: *President* Bedjaoui; *Vice-President* Schwebel; *Judges* Oda, Guilllaume, Shanhabuddeen, Renjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Ferrari Bravo, Higgins;

AGAINST: *Judges* Weeramantry, Koroma; *Judge* ad hoc Sir Geoffrey Palmer;

Vice-President Schwebel and Judges Oda and Ranjeva appended declarations to the Order of the Court.[163] Judge Shahbuddeen appended a separate opinion;[164] and Judges Weeramantry, Koroma and Judge ad hoc Sir Geoffrey Palmer appended dissenting opinions.[165]

(B) REQUESTS FOR ADVISORY OPINION

(i) *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*

By the same Order, the President fixed 20 June 1995 as the time limit within which States and organization having presented written statements might submit written comments on the other written statements (Art. 66, para. 4, of the Statue of the Court).

Written statements were filed by Australia, Azerbaijan, Colombia, Costa Rica, the Democratic People's Republic of Korea, Finland, France, Germany India, Ireland, the Islamic Republic of Iran, Italy, Japan, Kazakhstan, Lithuania, Malaysia, Mexico, Nauru, the Netherlands, New Zealand, Norway, Papua New Guinea, the Philippines, the Republic of Moldova, the Russian Federation, Rwanda, Samoa, Saudi Arabia, the Solomon islands, Sri Lanka, Sweden, Uganda, Ukraine, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

Written comments were filed by France, India, Malaysia, Nauru, the Russian Federation, the Solomon Islands, the United Kingdom of Great Britain and Northern Ireland and the United States of America. The written proceedings in this case were thus concluded.

Public sitting to hear oral statements or comments on the request for advisory opinion made by the World Health Organization were held between 30 October 1995 and 15 November 1995. These oral proceedings also covered the request for an advisory opinion submitted by the General Assembly of the United Nations on the question of the *Legality of the Threat or Use of Nuclear Weapons*. During the hearings statements were made by WHO, Australia, Egypt, France, Germany, Indonesia, Mexico, the Islamic Republic of Iran, Italy, Japan, Malaysia, New Zealand, Philippines, the Russian Federation, Samoa, Marshall Islands, Solomon Islands, Costa Rica, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Zimbabwe.

(ii) *Legality of the Threat or Use of Nuclear Weapons*

The request was transmitted to the Court by the Secretary-General of the United Nations in a letter dated 19 December 1994 and filed in the original on 6 January 1995.

By an Order of 1 February 1995,[166] the Court decided that States entitled to appear before the Court and the United Nations might furnish information on the questions submitted to the Court and fixed 20 June 1995 as the time limit within which written statements might be submitted (Art. 66 para. 2, of the Statute of the Court) and 20 September 1995 as the time limit within which States and organizations having presented written statements might present written comments on the other written statements (art. 66, para. 4, of the Statue).

Written statements were filed by Bosnia and Herzegovina, Burundi, the Democratic People's Republic of Korea, Ecuador, Egypt, Finland, France, Germany, India, Ireland, the Islamic Republic of Iran, Italy, Japan, Lesotho, Malaysia, the Marshall Islands, Mexico, Nauru, the Netherlands, New Zealand, Qatar, the Russian Federation, Samoa, San Marino, Solomon Islands, Sweden, the United Kingdom of Great Britain and Northern Ireland and the United Sates of America.

Written comments were filed by Egypt, Nauru and Solomon Islands. Nauru subsequently withdrew its comments.

Public sittings to hear oral statements or comments on the request for advisory opinion submitted by the General Assembly were held between 30 October and 15 November 1995. These oral proceedings also covered the request for advisory opinion submitted by the World Health Organization on the question of *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*. During

the hearings statements were made by Australia, Costa Rica, Egypt, France, Germany, Indonesia, the Islamic Republic of Iran, Mexico, Italy, Japan, Malaysia, New Zealand, the Philippines, Qatar, the Russian Federation, San Marino, Samoa, Marshall Islands, Solomon Islands, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Zimbabwe.

Consideration by the General Assembly

By its decision 50/404 of 12 October 1995, the General Assembly took note of the report of the International Court of Justice.[167]

6. INTERNATIONAL LAW COMMISSION[168]

Forty-seventh session of the Commission[169]

The International Law Commission held its forty-seventh session at its permanent seat at the United Nations Office at Geneva from 2 May to 21 July 1995. The Commission considered all the items on its agenda.

Regarding the item on the draft Code of Crimes against the Peace and Security of Mankind, the Commission had before it the thirteenth report of the Special Rapporteur, containing articles on aggression, genocide, systematic or mass violations of human rights and exceptionally serious war crime,[170] which upon consideration it decided to refer to the Drafting Committee. The Commission further decided that consultations would continue on articles on illicit traffic in narcotic drugs and wilful and severe damage to the environment, establishing a working group on the latter. The Commission also considered the report of the Drafting Committee on articles adopted on second reading by the Committee, [171] and decided to defer the final adoption of the articles contained therein until after the completion of the remaining articles.

Concerning the question of State succession and its impact on the nationality of natural and legal persons, the Commission considered the Special Rapporteur's first report,[172] and decided to establish a working group which would, inter alia, identify issues arising out of the topic.

On the matter of State responsibility, the Commission considered the Special Rapporteur's seventh report[173] and referred the articles contained therein to the Drafting Committee. The Commission also adopted those provisions received from the Drafting Committee, on first reading, for inclusion in Part Three of the draft concerning the settlement of disputes.

Regarding the topic international liability for injurious consequences arising out of acts not prohibited by international law, the Commission provisionally adopted articles on freedom of action and the limits thereto, prevention, liability and compensation and cooperation, received from the Drafting Committee. The Commission also considered the Special Rapporteur's eleventh report,[174] which dealt with harm to the environment, together with the tenth report, which had been submitted in 1994. Also before the Commission was a study prepared by the United Nations Secretariat pursuant to General Assembly resolution 49/51 of 9 December 1994 entitled "Survey of liability regimes relevant to the topic of international liability for injurious consequences arising out of the acts not prohibited by international law".[175] A working group was also established by the Commission on the topic with a mandate of identifying the activities which fell within the scope of the topic.

Regarding the item on the law and practice relating to reservations to treaties, the Commission considered the Special Rapporteur's first report.[176] Furthermore, the Commission authorized the Special Rapporteur to prepare a detailed questionnaire, as regards reservations to treaties, to ascertain the practice of, and problems encountered by, States and international organizations, particularly those which were depositaries of multilateral conventions.

Consideration by the General Assembly

By its resolution 50/45 of 11 December 1995,[177] adopted on the recommendation of the Sixth Committee,[178] the General Assembly took note of the report of the International Law Commission on the work of its forty-seventh session;[179] invited States and international organizations to answer promptly the questionnaire prepared by the Special Rapporteur on the topic concerning the reservations to treaties; and requested the Secretary-General to again invite Government to submit as soon as possible relevant materials, including treaties, national legislation, decisions of national tribunals and diplomatic and official correspondence relevant to the topic "State succession and its impact on the nationality of natural and legal persons". By the same resolution, the Assembly noted the suggestions of the Commission to include in its agenda the topic "Diplomatic protection" and initiate a feasibility study on a topic concerning the law of the environment, and decided to invite Governments to submit comments on these suggestions through the Secretary-General for consideration by the Sixth Committee during the fifty-first session of the General Assembly; and requested the Secretary-General to invite Governments to comment on the current state of the codification process within the United Nations system and to report thereon to the General Assembly at its fifty-first session.

7. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW[180]

Twenty-eighth session of the Commission[181]

The United Nations Commission on International Trade Law held its twenty-eight session in Vienna from 2 to 26 May 1995.

On the topic of the draft Convention on Independent Guarantees and Standby-by Letters of Credit, UNCITRAL submitted to the General Assembly the draft Convention for its consideration.

The draft UNCITRAL Model Law on Legal Aspects of Electronic Data Interchange (EDI) and Related Means of Communication was sent to all Governments and to interested organizations for comment.[182] The Commission, not having completed its consideration of the draft Model Law, decided to place it, together with the draft Guide to Enactment of the Model Law, on the agenda of its twenty-ninth session.

With respect to the matter of international commercial arbitration, UNCITRAL had before it at the current session the revised "Draft Notes on Organizing Arbitral Proceedings".[183] After consideration, the Commission requested the United Nations Secretariat to prepare a revised draft of the Notes for final approval by the Commission at its twenty-ninth session in 1996.

Concerning the topic of receivables financing, UNCITRAL had before it a report submitted by the United Nations Secretariat on the possible scope of future work and a number of assignment related issues, and suggestions on possible solutions to problems arising in the context of receivables financing.[184] The prevailing view during the current session was that the Commission should assign the report and the draft uniform rules contained in the report to a working group in order to prepare a uniform law on assignment in receivables financing.

The topics of (a) cross-border insolvency; (b) build-operate-transfer projects (BOT); and (c) monitoring implementation of the 1958 New York Convention were also considered at the twenty-eighth session as possible future work for UNCITRAL.

The Commission also noted that since its twenty-seventh session in 1994, three additional sets of abstracts with court decisions and arbitral awards relating to the United Nations Sales Convention and the UNCITRAL Model Law on International Commercial Arbitration had been published.[185]

Consideration by the General Assembly

At its fiftieth session, on 11 December 1995, the General Assembly, on the recommendation of the Sixth Committee, adopted two resolutions in the international trade area.[186] By its resolution 50/47, the Assembly took note of the report of UNCITRAL on the work of its twenty-eighth session; and by resolution 50/48, the Assembly adopted and opened for signature or accession the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit.[187]

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

In addition to the report of the International Law Commission and international trade law matters, dealt with separately in the above sections, the Sixth Committee also considered the following topics at the fiftieth session of the General Assembly before submitting its recommendations on the topics to the Assembly:

(*a*) United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

The General Assembly, by its resolutions 50/43 of 11 December 1995,[188] approved the guidelines and recommendations contained in section III of the report of the Secretary-General[189] and adopted by the Advisory Committee on the United Nations Programme of Assistance, and authorized the Secretary-General to carry out in 1996 and 1997 the activities specified in his report.

(*b*) United Nations Decade of International Law

By its resolution 50/44 of 11 December 1995,[190] the General Assembly, expressing its appreciation to the Secretary-General for his report[191] submitted pursuant to Assembly resolution 49/50 of 9 December 1994, expressed appre-

ciation for the work done on the United Nations Decade of International Law to States and international organizations and institutions that had undertaken activities in implementation of the programme for the activities for the third term (1995-1996) of the Decade; and further expressed its appreciation to the Secretary General for the successful organization of the United Nations Congress on Public International Law, held at United Nations Headquarters from 13 to 17 March 1995.[192]

(*c*) Establishment of an international criminal court

The General Assembly, by its resolution 50/46 of 11 December 1995,[193] took note of the report of the Ad Hoc Committee on the Establishment of an International Criminal Court,[194] including the recommendations contained therein; decided to establish a preparatory committee open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, to discuss further the major substantive and administrative issues arising out of the draft statute prepared by the International Law Commission; and also decided that the Preparatory Committee would meet from 25 March to 12 April and from 12 to 30 August 1996 and submit its report to the General Assembly at the beginning of its fifty-first session.

(*d*) Report of the Committee on Relations with the Host Country

By its resolution 50/49 of 11 December 1995,[195] the General Assembly endorsed the recommendations and conclusions of the Committee on Relations with the Host Country contained in paragraph 67 of its report,[196] expressed its appreciation for the efforts made by the host country, and hoped that problems raised at the meetings of the Committee would continue to be resolved in a spirit of cooperation and in accordance with international law; and took note with appreciation of the report of the Secretary-General on the problem of diplomatic indebtness.[197] By the same resolution, the Assembly urged the host country to consider lifting travel controls with regard to certain missions and staff members of the United Nations Secretariat of certain nationalities; and called upon the host country to review measures and procedures relating to the parking of diplomatic vehicles.

(*e*) United Nations Model Rules for the Conciliation of Disputes between States.

The General Assembly, by its resolution 50/50 of 11 December 1995,[198] commended the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization for having completed the final text of the United Nations Model Rules for the Conciliation of Disputes between Sates,[199] and drew the attention of States to the possibility of applying the Model Rules wherever a dispute had arisen between States which it had not been possible to solve through direct negotiations. The text of the Model Rules follows:

United Nations Model Rule for the Conciliation of Disputed between States

Chapter 1

Application of the rules

Article 1

1. These rules apply to the conciliation of disputes between States where those States have expressly agreed in writing to their application.

2. The States which agree to apply these rules may at any time, through mutual agreement, exclude or amend any of their provisions.

Chapter II

Initiation of the conciliation proceedings

Article 2

1. The conciliation proceedings shall begin as soon as the States concerned (henceforth: the parties) have agreed in writing to the application of the present rules, with or without amendments, as well as on a definition of the subject of the dispute, the member and emoluments of members of the conciliation commission, its seat and the maximum duration of the proceedings, as provided in article 24. If necessary, the agreement shall contain provisions concerning the language or languages in which the proceedings are to be conducted and the linguistic services required.

2. If the States cannot reach agreement on the definition of the subject of the dispute, they may by mutual agreement request the assistance of the Secretary-General of the United Nations to resolve the difficulty. They may also by mutual agreement request his assistance agreement on the modalities of the conciliation proceedings.

Chapter III

Number and appointment of conciliators

Article 3

There may be three conciliators or five conciliators. In either case the conciliators shall form a commission.

Article 4

If the parties have agreed that three conciliators shall be appointed, each one of them shall appoint a conciliator, who may not be of its own nationality. The parties shall appoint by mutual agreement the third conciliator, who may not be of the nationality of any of the parties or of the other conciliators. The third conciliator shall act as president of the commission. If he is not appointed within two months of the appointment of the conciliators appointed individually by the parties, the third conciliator shall be appointed by the Government of a third State chosen by agreement between the parties or, if such agreement is not obtained within two months, by the President of the International Court of Justice. If the President is a national of one of the parties, the appointment shall be made by the Vice-President or the next member of the Court in order of seniority who is not a national of the parties. The third conciliator shall not reside habitually in the territory of the parties or be or have been in their service.

Article 5

1. If the parties have agreed that five conciliators should be appointed, each one of them shall appoint a conciliator who may be of its own nationality. The other three conciliators, one of whom shall be chosen with a view to his acting as president, shall be appointed by agreement between the parties from among nationals of third States and shall be of different nationalities. None of them shall reside habitually in the territory of the parties or be or have been in their service. None of them shall have the same nationality as that of the other two conciliators.

2. If the appointment of the conciliators whom the parties are to appoint jointly has not been effected within three months, they shall be appointed by the Government of a third State chosen by agreement between the parties or, if such an agreement is not reached within three months, by the President of the International Court of Justice. If the President is a national of one of the parties, the appointment shall be made by the Vice-President or the next judge in order of seniority who is not a national of the parties. The Government or member of the International Court of Justice making the appointment shall also decide which of the three conciliators shall act as president.

3. If, at the end of the three-month period referred to in the preceding paragraph, the parties have been able to appoint only one or two conciliators, the two conciliators or the conciliator still required shall be appointed in the manner described in the preceding paragraph. If the parties have not agreed that the conciliator or one of the two conciliators whom they have appointed shall act as president, the Government or member of the International Court of Justice appointing the two conciliators or the conciliator still required shall also decide which of the three conciliators shall act as president.

4. If, at the end of the three-month period referred to in the preceding paragraph 2 of this article, the parties have appointed three conciliators but have not been able to agree which of them shall act as president, the president shall be chosen in the manner described in that paragraph..

Article 6

Vacancies which may occur in the commission as a result of death, resignation or any other cause shall be filled as soon as possible by the method established for appointing the members to be replaced.

Chapter IV

Fundamental Principles

Article 7

The commission, acting independently and impartially, shall endeavour to assist the parties in reaching an amicable settlement of the dispute. If no settlement is reached during the consideration of the dispute, the commission may draw up and submit appropriate recommendations to the parties for consideration.

Chapter V

Procedures and powers of the Commission

Article 8

The commission shall adopt its own procedure.

Article 9

1. Before the commission begins its work, the parties shall designate their agents and shall communicate the names of such agents to the president of the commission. The president shall determine, in agreement with the parties, the date of the commission's first meeting, to which the members of the commission and the agents shall be invited.

2. The agents of the parties may be assisted before the commission by counsel and experts appointed by the parties.

3. Before the first meeting of the commission, its members may meet informally with the agents of the parties, if necessary, accompanied by the appointed counsel and experts to deal with administrative and procedural matters.

Article 10

1. At its first meeting, the commission shall appoint a secretary.

2. The secretary of the commission shall not have the nationality of any of the parties, shall not reside habitually in their territory and shall not be or have been in the service of any them. He may be a United Nations official if the parties agree with the Secretary-General on the conditions under which the official will exercise these functions.

Article 11

1. As soon as the information provided by the parties so permits, the commission, having regard, in particular, to the time-limit laid down in article 24, should decide in consultation with the parties whether the parties should be invited to submit written pleadings and, if so, in what order and within what time limits, as well as the dates when, if necessary the agents and counsel will be heard. The decisions taken by the commission in this regard may be amended at any later stage of the proceedings.

2. Subject to the provisions of article 20, paragraph 1, the commission shall not allow the agent or counsel of one party to attend a meeting without having also given the other party the opportunity to be represented at the same meeting.

Article 12

The parties, acting in good faith, shall facilitate the commission's work and, in particular, shall provide it to the greatest possible extent with whatever documents, information and explanations may be relevant.

Article 13

1. The commission may ask the parties for whatever relevant information or documents as well as explanations, it deems necessary or useful. It may also make comments on the arguments advanced as well as the statement or proposals made by the parties.

2. The commission may accede to any request by a party that person whose testimony it considers necessary or useful be heard, or that experts be consulted.

Article 14

In cases where the parties disagree on issues of fact, the commission may use all means at its disposal, such as the joint expert advisers mentioned in article 15, or consultation with experts, to ascertain the facts.

Article 15

The commission may propose to the parties that they jointly appoint expert advisers to assist it in the consideration of technical aspects of the dispute. If the proposal is accepted, its implementation shall be conditional upon the expert advisers being appointed by the parties by mutual agreement and accepted by the commission and upon the parties fixing their emoluments.

Article 16

Each party may at any time, at its own initiative or at the initiative of the commission, make proposals for the settlement of the dispute. Any proposal made in accordance with this article shall be communicated immediately to the other party by the president, who may, in so doing, transmit any comment the commission may wish to make hereon.

Article 17

At any stage of the proceedings, the commission may, at its own initiative or at the initiative of one of the parties, draw the attention the parties to any measure which in its opinion might be advisable to facilitate a settlement.

Article 18

The commission shall endeavour to take its decisions unanimously but, if unanimity proves impossible, it may take them by a majority of votes of its members. Abstentions are not allowed. Except in matters of procedure, the presence of all members shall be required in order for a decision to be valid.

Article 19

The commission may, at any time, ask the Secretary-General of the United Nations for advice or assistance with regard to the administrative or procedural aspects of its work.

Chapter VI

Conclusion of the Conciliation proceedings

Article 20

1. On concluding its consideration of the dispute, the commission may, if full settlement has not been reached draw up and submit appropriate recommendations to the parties for consideration. To that end, it may hold exchange of views with the agents of the parties, who may be heard jointly or separately.

2. The recommendations adopted by the commission shall be set forth in a report communicated by the president of the commission to the agents of the parties, with a request that the agents inform the commission, within a given period, whether the parties accept them. The president may include in the report the reasons which, in the commission's view, might prompt the parties to accept the recommendations submitted. The commission shall refrain from presenting in its report any final conclusions with regard to factors or from ruling formally on issues of law, unless the parties have jointly asked it to do so.

3. If the parties accept the recommendations submitted by the commission, a procès-verbal shall be drawn up setting forth the conditions of acceptance. The procès-verbal shall be signed by the president and the secretary. A copy thereof signed by the secretary shall be provided to each party. This shall conclude the proceedings.

4. Should the commission decide not to submit recommendations to the parties, its decision to the effect shall be recorded in a procès-verbal signed by the president and the secretary. A copy thereof signed by the secretary shall be provided to each party. This shall conclude the proceedings.

Article 21

1. The recommendations of the commission will be submitted to the parties for consideration in order to facilitate an amicable settlement of the dispute. The parties undertake to study them in good faith, carefully and objectively.

2. If one of the parties does not accept the recommendations and the other party does, it shall inform the latter in writing, of the reasons why it could not accept them.

Article 22

1. If the recommendations are not accepted by both parties but the latter wish efforts to continue in order to reach agreement on different terms, the proceedings shall be resumed. Article 24 shall apply to the resumed proceedings, with the relevant time limit, which the parties may, by mutual agreement, shorten or extend, running from the commission's first meeting after resumption of the proceedings.

2. If the recommendations are not accepted by both parties and the latter do not wish further efforts to be made to reach agreement on different terms, a procès-verbal signed by the president and the secretary of the commission shall be drawn up, omitting the proposed terms and indicating that the parties were unable to accept them and do not wish further efforts to be made to reach agreement on different terms. The proceedings shall be concluded when each party has received a copy of the procè-verbal signed by the secretary.

Article 23

Upon conclusion of the proceedings, the president of the commission shall, with the prior agreement of the parties, deliver the documents in the possession of the secretariat of the commission either to the Secretary-General of the United Nations or to another person or entity agreed on by the parties. Without prejudice to the possible application of article 26, paragraph 2, the confidentiality of the documents shall be preserved.

Article 24

The commission shall conclude its work within the period agreed upon by the parties. Any extension of this period shall be agreed upon by the parties.

Chapter VII

Confidentiality of the commission's work and documents

Article 25

1. The commission's meetings shall be closed. The parties and the members and expert advisers of the commission, the agents and counsel of the parties, and the secretary and the secretariat staff, shall maintain strictly the confidentiality of any documents or statements, or any communication concerning the progress of the proceedings unless their disclosure has been approved by both parties in advance.

2. Each party shall receive, through the secretary, certified copies of any minutes of the meetings at which it was represented.

3. Each party shall receive, through the secretary, certified copies of any documentary evidence received and of experts' reports, records of investigations and statements by witnesses.

Article 26

1. Except with regard to certified copies referred to in article 25, paragraph 3, the obligation to respect the confidentiality of the proceedings and of the deliberations shall remain in effect for the parties and for members of the commission, expert advisers and secretariat staff after the proceedings are concluded and shall extend to recommendations and proposals which have not been accepted.

2. Notwithstanding the foregoing, the parties may, upon conclusion of the proceedings and by mutual agreement, make available tot the public all or some of the documents that in accordance with the preceding paragraph are to remain confidential, or authorize the publication of all or some of those documents.

Chapter VII

Obligation not to act in manner which might have an adverse effect on the conciliation

Article 27

The parties shall refrain during the conciliation proceedings from any measure which might aggravate or widen the dispute. They shall, in particular refrain from any measures which might have an adverse effect on the recommendations submitted by the commission, so long as those recommendations have not been explicitly rejected by either of the parties.

Chapter IX

Preservation of the legal position of the parties

Article 28

1. Except as the parties may otherwise agree, neither party shall be entitled in any other proceedings, whether in a court of law or before arbitrators or before any other body, entity or person, to invoke any views expressed or statements, admissions or proposals made by the other party in the conciliation proceedings, but not accepted, or the report of the commission, the recommendations submitted by the commission or any proposal made by the commission, unless agreed to by both parties.

2. Acceptance by a party of recommendations submitted by the commission in no way implies any admission by it of the considerations of law or of fact which may have inspired the recommendations.

Chapter X

Costs

Article 29

The costs of the conciliation proceedings and the emoluments of expert advisers appointed in accordance with article 15 shall be borne by the parties in equal shares.

(*f*) Implementation of provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions.

By its resolution 50/51,200 the General Assembly, taking note of the report of the Secretary-General on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by application of sanctions under Chapter VII of the Charter, [201] underlined the importance of the consultations under Article 50 of the Charter of the United Nations, as early as possible, with third States which might be confronted with special economic problems arising from the carrying out of preventive or enforcement measures imposed by the Security Council under Chapter VII of the Charter and of early and regular assessments, as appropriate, of their impact on such States, and, for this purpose, invited the Security Council to consider appropriate ways and means for increasing the effectiveness of its working methods and procedures applied in the consideration of the requests by the affected countries for assistance, in the context of Article 50; welcomed the measures taken by the Security Council aimed at increasing the effectiveness and transparency of the sanctions committees, and strongly recommended that the Council should continue its efforts further to enhance the functioning of those committees; and requested the Secretary-General, within existing resources, to ensure that the Security Council and its sanctions committees were able to carry out their work expeditiously.

(*g*) Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

The General Assembly, by its resolution 50/52 of 11 December 1995,[202] took note of the report of the Special Committee,[203] expressed it intention to initiate the procedure set out in Article 108 of the Charter of the United Nations to amend the Charter, with prospective effect, by the deletion of the "enemy State" clauses from Articles 53, 77 and 107 at its earliest appropriate future session. By the same resolution, the Assembly decided that the Special Committee should henceforth be open to all States Members of the United Nations and that it would continue to operate on the basis of the practice of consensus; and also decided that the Special Committee should be authorized to accept the participation of observers of States other than States Members of the United Nations which were members of specialized agencies or of the International Atomic Energy Agency in its meetings, and further decided to invite intergovernmental organizations to participate in the debate in the plenary meetings of the Committee on specific items when it considered that such participation would assist in the work.

(*h*) Measures to eliminate international terrorism

By its resolution 50/53 of 11 December 1995,[204] the General Assembly, having examined the report of the Secretary-General of 24 August 1995,[205] strongly condemned all acts, methods and practices of terrorism as criminal and unjustifiable; reaffirmed the Declaration on Measures to Eliminate International

Terrorism annexed to its resolution 49/60 of 9 December 1994; urged all States to promote and implement effectively and in good faith the provisions of the Declaration in all its aspects; called upon all States to take the necessary steps to implement their obligations under existing conventions to observe fully the principles of international law and to contribute to the further development of international law on this matter, and recalled the role of the Security Council in combating international terrorism whenever it posed a threat to international peace and security.

(*i*) Review of the procedure provided for under article 11 of the Statute of the Administrative Tribunal of the United Nations

By its resolution 50/54 of 11 December 1995,[206] the General Assembly, having considered the report of the Secretary-General,[207] decided to amend the statute of the Administrative Tribunal with respect to the judgements rendered by the Tribunal after 31 December 1995, by deleting article 11 (providing for the submission of an application to the Committee established uunder Article 96, paragraph 2, of the Charter of the United Nations to request an advisory opinion from the International Court of Justice on a judgement rendered by the Tribunal); also decided that, with respect to judgements rendered by the Tribunal before 1 January 1996, the statute of the Tribunal should continue to apply as if the above amendment had not been made; and stressed the importance for the United Nations staff and the Organization alike of ensuring a fair, efficient and expeditious internal system of justice within the United Nations, including effective mechanisms for the resolution of disputes.

(*j*) Review of role of the Trusteeship Council

The General Assembly, by its resolution 50/55 of 11 December 1995,[208] noting the proposal made by Malta on the review of the role of the Trusteeship Council,[209] on the proposal made and different views expressed by Member States at the fiftieth session of the General Assembly on decisions relative to the future of the Trusteeship Council and the report of the Secretary-General on the work of the Organization,[210] requested the Secretary-General to invite Member States to submit, not later than 31 May 1996, written comments on the future of the Trusteeship Council; and also requested the Secretary-General to submit to the General Assembly, as early as possible and before the end of its fiftieth session, for appropriate consideration, a report containing comments made by Member States on the subject.

(*k*) 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 50/416 of 11 December 1995,[211] the General Assembly decided to bring three draft article prepared by the International Law Commission[212] to the attention of Member States, and to remind Member States of the possibility that this field of international law and any further development within it might be subject to codification at an appropriate time in the future.

9. UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH[213]

The United Nations Institute for Training and Research continued to implement a number of training programmes. During 1995, the programme included the organization of a course, to be held at Geneva on an annual basis, on multilateral diplomacy and international cooperation, as well as information on the work of international organizations, for French speaking diplomats from developing countries and countries with economies in transition. Moreover, the UNEP/UNITAR second global training programme in environmental law and policy was held from 27 March to 13 April 1995 at UNEP headquarters in Nairobi. In the area of peacekeeping, UNITAR had created correspondence courses on the subject during the year. Furthermore, the Institute had begun a document series relating to issues on debt and financial management. "The role of the lawyer in external debt management" (Document No.5) was published in Geneva in October 1995.

Consideration by the General Assembly

At its fiftieth session, the General Assembly, by its resolution 50/121 of 20 December,[214] adopted on the recommendation of the Second Committee,[215] reaffirmed the relevance of UNITAR, particularly in view of the many training requirements of all Member States, invited the Institute to further develop its cooperation with United Nations institutes and other relevant national, regional and international institutes; and welcomed the decision of the UNITAR Board of Trustees, at its thirty-third session and at its special session, inviting the Institute to open a liaison office in New York, in so far as that was possible within its existing resources and pursuant to General Assembly resolutions 47/227 and 49/125 of 19 December 1994, in order to respond to the training needs of the Missions and delegations of Member states in New York and in order to Strengthen its cooperative relationship with the United Nations Secretariat.

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

1. INTERNATIONAL LABOUR ORGANIZATION

The International Labour Conference (ILC), which held its 82nd Session at Geneva from 6 to 22 June 1995, adopted several amendments to its Standing Orders:[216]

General Standing Orders

(*a*) Two paragraph have been added to article 19 (Methods of voting);

Governing Body Elections

(*a*) Amendment to article 49 (Governments electoral college), paragraph 4;

(*b*) Amendment to article 50 (Employers' and Workers' electoral colleges), paragraph 2;

At its 82nd Session, the International Labour Conference also adopted a Convention (No. 176) and a Recommendation (No. 183) concerning Safety and Health in Mines,[217] as well as the Protocol of 1995 to the Labour Inspection Convention (n.81), 1947.[218]

The Committee of Experts on the Application of Conventions and Recommendations met in Geneva from 16 February to 3 March 1995 and presented its report,[219] which was submitted to the International Labour Conference at its 82nd Session. The Committee met again in Geneva from 23 November to 8 December 1995 to adopt its report to the 83rd Session of the International Labour Conference (1996).[220]

Representations were lodged under article 24 of the Constitution of the International Labour Organization alleging non-observance by the Russian Federation of the Seafarer's' Identity Documents Conventions, 1958 (No. 108)[221]; by Greece of the Labour Inspection Convention, 1948 (No. 81)[222] by the Congo the Protection of Wages Convention, 1949 (No. 95)[223]; by Peru of the Night Work (Women) Convention (Revised), 1934 (No.41); the Underground Work (Women) Convention, 1935 (No.45); and the Social Security (Minimum Standards) Convention, 1952 (No. 102);[224] by Senegal of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Abolition of Forced Labour Convention, 1957 (No. 105);[225] by Peru of the Right of Association and Protection of the Right to Organize Convention, 1948 (No. 87), the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), the Discrimination (Employment and Occupation Convention, 1958 (No. 111) and the Employment Policy Convention, 1964 (No. 122); [226] and by Turkey of the Termination of Employment Convention, 1982 (No. 158)[227].

The Governing Body of the International Labour Office, which met in Geneva, considered and adopted the following reports of its Committee on Freedom of Association: the 297th and 298th reports[228] (262nd Session, March/April 1995), the 299th Report[229] (263rd Session, June 1995); and the 300th and 301st Report[230] (264th Session, November 1995).

The Working Party on the Social Dimensions of the Liberalization of International Trade, constituted by the Governing Body of ILO at its 260th Session (June 1994), held two meetings in 1995 during the 262nd[231] (March/April 1995) and 264th[232] (November 1995) sessions of the Governing Body.

The Working Party on Policy regarding the Revision of Standards, constituted within the Committee on Legal Issues and International Labour Standards by the Governing Body of ILO at its 262nd Session (March/April 1995), held one meeting during 1995 during the 264th (November 1995) Session of the Governing Body.[233]

At its 264th Session (November 1995), the Governing Body of ILO adopted the General Characteristics and Standing Orders of Sectoral Meeting.[234]

2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

(*a*) Membership

Five new members were admitted to the Organization: Azerbaijan, Georgia, Republic of Moldova, Tajikistan and Turkmenistan, at the 28th Session of the Conference, held in October 1995.

(*b*) General Constitutional and legal matters

(*i*) *Decisions taken at the 28th Session of the Conference*

a. Broadening of the mandate of the Commission on Plant Genetic Resources

The Conference decided in resolution 3/95, to broaden the mandate of the Commission to cover all aspects of genetic resources of relevance to food and agriculture, and to implement the broadening in a step-by-step process. The renamed Commission is "Commission on Genetic Resources for Food and Agriculture".

b. Phytosanitary standards

The Conference adopted "Guidelines for Pest Risk Analysis", "Code of Conduct for the Import and Release of Exotic Biological Control Agents" and a Phytosanitary Standard on "Requirements for the Establishment of Pest Free Areas".

c. Code of Conduct for Responsible Fisheries

The Conference adopted, in resolution 4/95, a voluntary "Code of Conduct for Responsible Fisheries".

d. General Regulations of the World Food Programme and reconstitution of the Committee on Food Aid Policies and Programmes as the Executive Board of the World Food Programme

The Conference adopted resolution 9/95 transforming the Committee on Food Aid Policies and Programmes into an Executive Board of the World Food Programme and approved the revised General Regulations of WFP, to enter into force on 1 January 1996, subject to the concurrence of the General Assembly of the United Nations.

e. Agreement between the Organization of African Unity and FAO

By resolution 10/95, the Conference authorized the Director-General to conclude a revised Agreement between the two organizations.

(*ii*) *The Council*

a. Coordinating Working Party on the Atlantic Fishery Statistic (CWP)

At its 108th Session (June 1995), the Council approved revised Statutes and Rules of Procedure of the Coordinating Working Party on Atlantic Fishery Statistics.

b. Participation of European Community and EC member States representing their overseas territories outside the geographical scope of the Treaty of Rome, in FAO meetings and intergovernmental agreements under FAO auspices

At its 109th Session (October 1995), the Council adopted the following guidelines governing participation in agreements under article XIV of the Constitution:

> "(*a*) In accordance with the provision of article XIV of the Constitution, each agreement should set its own criteria, and terms of conditions for participation by such Member States, bearing in mind the objectives and particular conditions of the agreement concerned.
>
> (*b*) For agreements declared as falling within the mixed competence of a Member Organization and its Member States, the normal rules governing participation in general meetings of the Organization would apply, which eliminate any possibility of a "double voice" for the member Organization and its Member States.
>
> (*c*) For agreements declared as falling within the exclusive competence of the Member Organization, the issue of the participation and voting rights should be decided upon in each individual agreement by the contracting parties concerned in the exercise of their sovereign rights, in accordance with the provisions of article XIV of the Constitution. In so deciding, the contracting parties concerned shall exercise care to avoid any possibility of a double voice for the Member Organization and its Member States in any body set up under the agreement, whether from a legal or a practical point of view.
>
> (*d*) In cases where the contracting parties decide that the agreement concerned should be open to participation both by a member Organization and by individual Members States of that Organization having territories lying outside the geographical scope of the transfer of competence by those Member States to the Member Organization, such participation should be limited to participation on behalf of those territories and representing only the interests of those territories."

The Council further agreed that the above guidelines should be supplemented d by the following four points:

> "(i) FAO is a technical organization and it is outside its mandate to deal with matters of essentially a political nature. These matters should be dealt with in the forum of the United Nations or other appropriate forums. The Guidelines … should be understood in this context.

(ii) The Guidelines, in essence, indicate that arrangements for participation in agreements established under article XIV of the Constitution should be resolved primarily by the parties to each agreement, in the agreement, in the context of the particular situation prevailing.

(iii) The action taken by the Council at this session would be without prejudice to the rights and position of each State with respect to matters relating to its sovereignty.

(iv) As provided for in article XIV itself, in agreements where a Member Organization becomes a party in the exercise of its exclusive competence over the subject matter, that Member Organization would participate with the single rather than a multiple vote, with equal rights of participation with those of the other parties."

c. Statutes of the Commission on Genetic Resources for Food and Agriculture

At its 110th Session (November 1995), by resolution 110/1, the Council adopted the Statutes of the Commission Genetic Resources for Food and Agriculture.

(*c*) Legislative matters

Agrarian legislation

Albania (joint ventures), Burundi (rural land law), Guinea (farmers' organizations), Guinea (rural land law), Guyana (land law), Morocco (agricultural investment), Namibia (land law), United Republic of Tanzania (land law).

Water legislation

Guinea (water law), Islamic Republic of Iran (water law), Kenya/United Republic of Tanzania/Uganda—Lake Victoria Basin (international legal/institutional aspects), Malaysia (irrigation and drainage legislation), Nile Basin countries (water law).

Forestry and wildlife legislation

Burkina Faso (forestry and wildlife), Cambodia (forestry), Comoros (forestry), Mauritania (forestry and wildlife), Myanmar (forestry), Namibia (forestry), Tonga (forestry), Trinidad and Tobago (forestry), United Republic of Tanzania (Zanzibar forestry).

Environment legislation

Cameroon (environmental institutions), Cambodia (environment legislation), Cyprus (protection and management of nature), United Republic of Tanzania (biodiversity in Zanzibar), United Republic of Tanzania (environmental legislation for Zanzibar).

Fisheries legislation

Burkina Faso (fish and aquaculture), Central African Republic (fish and aquaculture), Côte D'Ivoire, Lesotho, Lithuania, Madagascar, Togo (fish and aquaculture).

Animal and food legislation

Albania (veterinary), Cambodia (veterinary), Indonesia (veterinary), People's Democratic Republic of Laos (food), Lithuania (veterinary), Poland (veterinary), Togo (food), Venezuela (veterinary)

Pesticides legislation

Central America and Panama, Lebanon, Malawi.

Plant legislation

Albania (seed), El Salvador, Morocco (fruit and vegetables), United Republic of Tanzania (plant breeder's rights).

Other

Cyprus (protection of wetlands), Jamaica (customs duties).

(*d*) *Treaties and amendments*

(*i*) *Conventions and agreements concluded under article XIV of the FAO Constitution*

The FAO Council, at its 108th session (June 1995) approved amendments to the Agreement for the Establishment of a Commission for Controlling the Desert Locust in the Near East, which entered into force for all parties to the Agreement.

(*ii*) *Conventions and agreements concluded outside the framework of FAO in respect of which the Director-General exercises depository functions*

a. Amendments to the Constitution of the Centre for Marketing Information an Advisory Services for Fishery Products in the Arab Region (INFOSAMAK), were adopted by the General Assembly of the Centre on 16 March 1995, with immediate effect.

b. The Regional Convention o Fisheries Cooperation among African States Bordering the Atlantic Ocean entered into force on 11 August 1995.

3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CUTURAL ORGANIZATION

(*a*) *Membership in the Organization*

The Marshall Islands and Nauru became States Members of UNESCO on 30 June and 9 November 1995 respectively.

Macau became an Associate Member of UNESCO on 25 October 1995.

(*b*) *Constitutional and procedural questions*

During 1995, UNESCO amended its Constitution, Rules of Procedure and Financial Regulations.

Resolution 28 C/20.2, adopted on 31 October 1995: the General Conference at its 28th session decided to amend, with immediate effect, article V, paragraph 1, of the Organization's Constitution, to change the number of Member States composing the Executive Board from 51 to 58.

(*c*) *Human rights*

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

The committee on Conventions and Recommendations met in private sessions at UNESCO Headquarters from 11 to 13 May and from 4 to 7 October 1995, in order to examine the communications which had been transmitted to it in accordance with Executive Board decision 104 EX/3.3

At its May session, the Committee examined 27 communications of which 16 were examined with a view to determining admissibility, 4 were examined as regards their substance and 7 were examined for the first time. Of the communications examined, none were declared irreceivable and 8 were struck from the Committee's list, either because they were considered as having been settled or because they did not, upon examination of the merits, appear to warrant further action. The examination of 19 communications was suspended. The Committee presented its report on its examination of these communications to the Executive Board at its 146th Session.

At its October session, the Committee had before its 21 communications, of which 14 were examined as to their admissibility, 4 were examined from the standpoint of their substance, and 3 were examined for the first time. Of the communications examined, none were declared irreceivable and 5 were struck from the Committee's list since they were considered as having been settled or because they did not, upon examination of the merits, appear to warrant further action. The examination of 16 communications was suspended. The Committee presented its report on its examination of these communications to the Executive board at its 147th session.

(*d*) *Copyright activities*

(1.) Organization of statutory meetings

(1.1) Intergovernmental Committee of the Universal Copyright Convention, Tenth

Ordinary Sessions, Paris 27-30 June 1995

On the Basis of studies prepared by the Secretariat, the Committee discussed and drew conclusions, *inter alia*, wish regard to the following legal issues:

—Economic impact of the "*droit de suite*" (participation right) in States where it is applicable;

—Search for solutions to combat piracy (illegal use) of intellectual works;

—Search for a legal system for the protection of research results in genetics;

—Legal aspects of the production, diffusion and exploitation of multimedia works;

—Committee's prerogatives for settling differences between the States party to the Universal Copyright Convention.[235]

(1.2) Intergovernmeental Committee of the Rome Convention, Fifteenth Ordinary Session, held jointly with ILO and WIPO, Geneva, 3-5 July 1995

The Committee discussed and drew conclusions with regard, *inter alia*, to a study prepared by the Secretariat regarding the implementation of or adherence to the Convention and the impact of digital technology on so-called neighbouring rights.

(2.) Legal assistance in the elaboration or revision of national laws on copyright and neighbouring rights was provided to *seven* Member States (Bolivia, Cuba, Paraguay, Russian Federation, Sudan, Uganda, and Ukraine) at their request. The adoption of the laws will stimulate national creativity and provide a legal framework for the development and smooth functioning of the cultural industry. Experience shows that the best results are obtained when the laws are elaborated on the spot. This allows the experts to meet the interested circles, to listen to their opinions and proposals and to involve domestic lawyers in drafting the bills, thus sharing with them the expert's knowledge and experience.

(3.) Two studies on the impact of copyright on the national economies, in Africa and Asia were prepared, and one on the author's trade, which will be published in UNESCO *Copyright Bulletin* in 1996. These activities are aimed at helping the States better understand the role of copyright in economic and overall development.

(4.) Training activities on copyright an neighbouring rights were carried out as follows:

(i) A subregional seminar for the Arab States of the Gulf was held in Qatar in December 1995. The seminar was organized in cooperation with the National Commission of Qatar for UNESCO and the UNESCO Regional Office. It afforded an opportunity for governmental officials responsible for copyright and neighbouring rights matters to acquire knowledge in this field and discuss a wide range of questions with which they have to deal in their work.

(ii) Two additional training courses on copyright were held: a course for Sudanese nationals (Khartoum, March 1995) and another for Ugandan nationals (Kampala, May 1995). The courses were organized in close cooperation with UNESCO National Commissions. The participants were representatives of various circles dealing with copyright. The knowledge they acquired will be used in their everyday work. Both Courses also provided opportunities to discuss the preliminary draft laws on copyright, which were revised in the light of the comments and suggestions made by the participants.

(iii) In collaboration with the International Confederation of Societies of Authors and Composers, short-term grants for training in the collective administration of authors' rights were provided to seven national from Algeria, the Congo, Djibouti, Ghana, Madagascar and Senegal. These grants allowed the participants to acquire knowledge and practical experience in the function of authors' societies.

(iv) The current situation in developing countries being characterized by a great lack of qualified personnel in the field of copyright and in an endeavour to radically improve it, UNESCO continued its efforts to introduce and develop the teaching of copyright at the university level. A regional committee of experts-teachers of law was held for the African states having English as a common language (Nairobi, September 1995). The Committee was organized in close cooperation with the UNESCO Regional Office. The documents which were adopted were sent to the National Commissions of the States of the region with a request that they be brought to the attention of the Ministries of Higher Education.

(5.) A number of articles and studies on current copyright and neighbouring rights issues have been published in the UNESCO quarterly *Copyright Bulletin*. For the first time, the *Bulletin* was published in Chinese, in cooperation with Chinese authorities.

(6.) As a result of efforts to promote the international protection of copyright and neighbouring rights, in 1995, 15 Member States adhered to the conventions administered either by UNESCO alone, or in cooperation with ILO and WIPO, thus significantly widening international cooperation in this field and further ensuring cultural exchanges among States.

4. WORLD HEALTH ORGANIZATOIN

(*a*) Constitutional and legal development

During 1995, the following country became a Member 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) of the Constitution:

Palau ..... 9 March 1995

Thus, at the end of 1995, there were 190 States Members and two Associate Members of WHO.

In August 1995, there was an exchange of letters between the Government of Japan and WHO on the establishment, as an integral part of the secretariat of WHO, of a Centre for Health Development in Kobe, to be opened in 1996. The WHO Centre will focus on issues relating to health development, particularly with respect to the relationships among social, cultural, economic, demographic, epidemiological and environmental factors and health.

In November 1995, WHO signed, together with UNICEF, UNDP, UNFPA, UNESCO and the International Bank for Reconstruction and Development, a Memorandum of Understanding establishing a Joint and Co-sponsored United Nations Programme on HIV/AIDS (UNAIDS) to further mobilize the global response to the HIV/AIDS epidemic.

WHO/Regional Office for the Americas (AMRO)/PAHO, in August 1995, an agreement was signed with Honduras to execute a programme for the prevention and control of AIDS. An agreement was also concluded with Paraguay in support of the institutional strengthening of its health services. In October 1995, an agreement was entered into with the European Communities Humanitarian Office (ECHO) for the provision of humanitarian assistance to the victims of cyclone disaster in region. In September 1995, a multilateral agreement for the continued operation of the Caribbean Epidemiological Center (CAREC)

with the Governments of the Caribbean was concluded to strengthen the capabilities of the subregion in the areas of epidemiology, laboratory technology and public health.

(*b*) Health legislation

In May 1995, the World Health Assembly adopted various resolutions addressing health legislation issues.

Resolution WHA48.7, "Revision and updating of the international Health Regulations", requested the Director-General to take steps to prepare a revision of the International Health Regulations. It also urged Member States to participate in its revision.

Resolution WHA48.11, "An international strategy for tobacco control", requested the Director-General to report to the Forty-ninth World Health Assembly on the feasibility of developing an international instrument such as guidelines, a declaration or an international convention on tobacco control to be adopted by the United Nations, taking into account existing trade and other conventions and treaties.

In the course of 1995, the *International Digest of Health Legislation* (years 1980-1995) became available on CD-ROM. This greatly improves the accuracy of legislation searches in response to Governments requests for cooperation in drafting legislation.

In 1995, WHO dealt with over 200 requests from Governments and various institutions concerning various topics such as HIV/AIDS legislation, human genetics, reproductive technologies, medical ethics, the rights of patients, etc.

In cooperation with UNAIDS, a worldwide directory of HIV/AIDS legislation has been updated and it is expected that this document, prepared in 1995, will be finalized in July 1996.

WHO/Regional Office for the Americas/PAHO Health Legislation continued with its cooperation in the production of the LEYES database containing an index to Latin American and Caribbean health legislation and published in a LILACS compact disk produced by the Latin American Centre on Health Information (BIREME), one of PAHO's centres. Advice was given for the drafting of health codes/general health laws for the Dominican Republic, Guatemala, Nicaragua and Panama. Other areas of work included the development of regulatory frameworks for control of blood, vaccines, traditional medicine, workers health, breast feeding promotion, and others.

5. WORLD BANK

(*a*) IBRD, IDA and IFC membership

In the course of 1995, Brunei Darussalam became a member of IBRD, Azerbaijan became a member of IDA and Armenia, Azerbaijan, Bahrain, Eritrea, Georgia and the Republic of Moldova became members of IFC. As at 31 December 1995, membership in IBRD, IDA and IFC stood at 179, 158 and 168 respectively.

(*b*) World Bank Inspection Panel

The World Bank's Inspection Panel was established on 22 September 1993 and started operations in August 1994.[236] The Panel provides groups of private citizens direct access to the Bank if they believe they are being directly and adversely affected by the failure of the Bank to follow its own policies and procedures with respect to the design, appraisal or implementation of a project financed by the Bank or IDA.

In the course of 1995, the Inspection Panel continued to deal with the first request for inspection, and dealt with four other requests. The following is a brief summary of the outcome of these requests.[237]

Request No.1. Nepal—Proposed Arun III Hydroelectric Project.

On the request for inspection of the planned Arun III hydroelectric power project in Nepal, registered in November 1994, the Executive Directors agreed with the Panel's recommendation that it should be authorized to carry out an investigation in three areas: environmental assessment, involuntary resettlement and treatment of indigenous peoples. The Panel concluded its investigation in June 1995. After receipt of the Panel's report, the Bank's Management reassessed the project and in August 1995 the President informed the Executive Directors that he had decided not to proceed with the project. He also informed the Executive Directors that he had assured the Nepalese authorities that IDA attached the highest priority to supporting Nepal in devising and implementing an alternative strategy for meeting its needs for electric power.

Request No.2. Compensation for Expropriated Foreign Assets in Ethiopia

In April 1995, the Panel received a request alleging that IDA had failed to observe its policies concerning lending to countries that had expropriated foreign property. The Panel recommended that no inspection should take place, and the Executive Directors concurred. In the course of the consideration of the present request, the Executive Directors clarified that (*a*) the Panel's mandate was limited to reviewing compliance with Bank policies and procedures with respect to the design, appraisal and /or implementation of projects as provided for in paragraph 12 of the resolution establishing the Panel; and (*b*) the term "project" as used in the resolution and in (*a*) above had the same meaning as used in Bank practice.

Request No. 3. Emergency Power Project in the United Republic of Tanzania

In March 1995, requesters claimed that financing to be provided under an IDA credit to buy and install emergency power generating units was against IDA's Articles of Agreement because private sector financing was available on reasonable terms (namely from the firm the requestors owned or worked for). The Panel did not recommend an investigation because it found during its preliminary review that the Bank Management had considered the alternative financing proposed by the requesters and adequately reported on it to the Executive Directors. The requesters also claimed potential harm as a result of an al-

leged violation of environmental policies. The Panel found that the requesters were not eligible to file the claim since they could not possibly be harmed directly by the alleged violation. In September 1995, the Executive Directors concurred in the Pane's recommendation not to conduct an inspection.

Request. No. 4. Brazil—Rondónia Natural Resources Management Project (Planofloro)

This request concerns a loan to Brazil to support a project in Rondónia, known locally as Planofloro, designed to correct the failure of the environmental and social components of a number of earlier projects in Rondónia (known as Polonoroeste). In June 1995, intended beneficiaries of Planofloro requested inspection and claimed that the project design of Planofloro and the Bank's lack of enforcement of certain covenants had resulted in damages to them, and cited a number of policies including in the areas of indigenous peoples, forestry, investment lending, accounting, financial reporting and auditing, etc., they claimed the Bank had violated. In its response, the Bank stated that it shared some of the concerns raised in the request and noted that the thrust of the complaint was not that the project in itself was causing harm, but that it was not proceeding quickly enough and that Management had not used available legal remedies to accelerate progress. It suggested that lack of suspension of disbursements was not a sign of negligence or lack of concern on the part of Management, but rather a conscious decision to pursue other means to achieve the Projects' objectives.

After an initial field study on the part of one member of the Panel to assess the requester' claims of damage and the adequacy of Management's response, the Panel recommended an inspection. In September 1995, the Executive Directors asked the Panel to "further substantiate the materiality of the damages and to establish whether such damages were caused by a deviation from Bank policies and procedures". Thereafter, the Panel conducted an additional review of the complaints, taking into account further information from the requesters, Bank Management and outside parties, and Management presented to the Panel a draft progress report and a plan of action to remedy past failures and refocus project design and implementation. The Panel concluded by recommending once again that an inspection should be authorized. In January 1996, the Executive Directors decided, in the light of the action plan and the follow-up under way, that it would not be advisable to proceed with an investigation as recommended by the Panel. However, in view of the complexity of the Project and the desire of the Bank to assure its success, the Executive Directors agreed to review Management's progress report in six to nine months and to invite the Panel to assist in the review.

Request No. 5. Chile: Pangue/Ralco Hydroelectric Complex

In November 1995, requesters alleged that IFC's participation in the construction of the Pangue/Ralco complex of hydroelectric dams in Chile violated a number of IFC and World Bank policies. The Panel informed the requesters and the Executive Directors of the Bank and IFC that the request was inadmissible because the Panel had no authority to examine complaints about IFC projects. Separately, Mr. Wolfenshon, as President of IFC, instructed IFC Management to conduct an impartial review of the project.

(*c*) Multilateral Investment Guarantee Agency (MIGA)

Signatories and members

The Convention Establishing the Multilateral Investment Guarantee Agency (the Convention)[238] was opened for signature to member countries of the World Bank and Switzerland in October 1985. As of December 1995, the Convention had been signed by 154 countries. During 1995, requirements for membership were completed by Armenia and Colombia.

Significant decisions of the Council of Governors

On 28 July 19895, pursuant to resolution No.47 of the Council of Governors adopted on 8 February 1994, the Board of Directors authorized a second increase in MIGA's allowable level of maximum contingent liabilities, from 250 per cent to 350 per cent of its unimpaired capital and reserves.

Guarantee operations

MIGA issues investment guarantees to eligible foreign investors in its developing member countries, against the major political (i.e., non-commercial) risks of expropriation, currency transfer, and war and civil disturbance. As at 31 December 1995, MIGA had issued 178 contracts of guarantee, totaling more than US$ 2.0 billion in maximum contingent liability. In addition, MIGA had six commitment letters outstanding for $101 million of potential additional coverage. Aggregate foreign direct investment facilitated by all MIGA-insured projects was estimated to be more than $8.0 billion. Investors holding MIGA guarantees were from: Belgium, Canada, Cayman Islands, France, Germany, Italy, Japan, Luxembourg, Netherlands, Norway, Republic of Korea, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland and United States of America. Similarly, host countries of MIGA-guaranteed investments included: Argentina, Bangladesh, Brazil, Bulgaria, Cameroon, Chile, China, Costa Rica, Czech Republic, Ecuador, El Salvador, Ghana, Guyana, Honduras, Hungary, Indonesia, Jamaica, Kazakhstan, Kuwait, Kyrgyzstan, Madagascar, Mali, Morocco, Pakistan, Papua New Guinea, Peru, Philippines, Poland, Russia Federation, Saudi Arabia, Slovakia, South Africa, Trinidad and Tobago, Tunisia, Turkey, Uganda, Uzbekistan, Venezuela and Viet Nam.

Host Country investment agreements between MIGA and its member states

As directed by article 23(b)(ii) of the Convention, the Agency concludes bilateral legal protection agreements with developing member countries to ensure that MIGA is afforded treatment no less favorable 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 at 31 December 1995, MIGA had concluded 71 such agreements. In 1995, the Agency concluded 7 agreements with the Bahamas, Bulgaria, Ecuador, Equatorial Guinea, Lebanon, Saudi Arabia, and Venezuela.

In accordance with the directives of article 18(a) of the Convention, the Agency also negotiates agreements on the use of local currency. These agreements enable MIGA to dispose of local currency in exchange for freely usable currency, acquired by it as a result of subrogation arising from a claim paid by the Agency. As at 31 December 1995, MIGA had concluded 71 such agreements. In 1995, the Agency concluded agreement with Equatorial Guinea and Venezuela.

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 at 31 December 1995 MIGA had concluded 86 such agreements. In 1995, the Agency concluded agreements with the following 9 Countries: Armenia, the Bahamas, Bosnia and Herzegovina, Equatorial Guinea, Moldova, Pakistan, Republic of Togo, Trinidad and Tobago, Venezuela, and Viet Nam.

IPAnet

Article 2(b) of the MIGA Convention directs the Agency to "carry out appropriate complementary activities to promote the flow of investments to and among developing member countries". As a logical up-to-date extension of this mandate, the Investment Promotion Agency Network (IPAnet) was launched over the Internet by MIGA on 7 October 1995 to promote investment in emerging markets in developing countries. IPAnet is an on-line marketing, information dissemination and communications network which links investment intermediaries, private investors and providers of technology and investment-related information throughout the world. When completed, it will carry information on investment opportunities, directories of key individuals, marketing billboards, ongoing electronic conferences and surveys, global databases on foreign investment conditions (including laws and implementing regulations), user-customized news, clubs for specialized groups of users and a pre-navigated tour of investment-related information on the Internet. IPAnet was initially intended for subscription by private investors and intermediaries such as investment promotion agencies (IPAs) in MIGA member countries, governments, business chambers and associations, financial institutions, and investment consultants.

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

Signatures and ratifications

During 1995, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention)[239] was signed by seven countries; Algeria, the Bahamas, Bahrain, Guatemala, Mozambique, Oman and Panama. Three of them—the Bahamas, Mozambique and Oman—as well as Bolivia, Nicaragua, Saint Kitts and Nevis, Uzbekistan and Venezuela, ratified the ICSID Convention in the course of the year. With these new signatures and ratifications, the number of the signatory States and Contracting States reached 139 and 123 respectively.

Disputes before the Centre

During 1995, arbitration proceedings were instituted in three new cases: *Leaf Tobacco A. Michaelides S.A. and Greek-Albanian Leaf Tobacco & Co. S.A.* v. *Republic of Albania* (Case ARB/95/1); *Cable television of Nevis, Ltd. And Cable Televison of Nevis Holdings, Ltd.* v. *Federation of St. Kitts and Nevis* (case ARB/95/2); and *Antoine Goetz and others* v. *Republic of Burundi* (case ARB/95/3).

As at 31 December 1995, four other cases were pending before the Centre: *American Manufacturing & Trading, Inc.* v. *Republic of Zaire* (case ARB/93/1); *Philippe Gruslin* v. *Government of Malaysia* (case ARB/94/1); *SEDITEX Engineering Beratungsgesellschaft für die Textilindustrie m.b.H* V. *Government of Madagascar* (case COIN/94/1; and *Tradex Hellas S.A.* v. *Republic of Albania* (case ARB/94/2).

6. INTERNATIAONL MONETARY FUND

(*a*) Membership Issues

(*i*) *Accession to membership*

The Fund's membership increased by two countries in 1995. Brunei Darussalam became a member on 10 October 1995, with a quota of SDR 150 million.[240] On 20 December 1995, the Executive Board decided that Bosnia and Herzegovina had fulfilled the necessary conditions to succeed to the membership of the former Socialist Federal Republic of Yugoslavia, with a quota of SDR 121.2 million. Henceforth, the total membership in the Fund as at 31 December 1995, increased to 181 countries.

(*ii*) *Status under article VIII or XIV*

Under article XIV, section 2, of the Fund's Articles of Agreement, when joining the Fund a member may avail itself of the transitional arrangements and thus may maintain and adapt to changing g circumstances the restrictions on the making of payments and transfers for current international transactions that were in existence at the time it became a Fund member. Article XIV does not, however, permit a member to introduce new restrictions on the making of payments and transfers for current international transactions without the approval of the Fund. Members of the Fund formally accepting the obligations of article VIII, sections 2, 3, and 4, undertake, among other things, to refrain from (*a*) imposing restrictions on the making of payments and transfers for current international transactions, or (*b*) engaging in multiple currency practices without the Fund's approval. During 1995, the following 15 member countries formally accepted the obligations of article VII, raising the total number of countries that have accepted these obligations as at 31 December 1995 to 113 members: Botswana, Brunei Darussalam, Croatia, Czech Republic, Guinea, Jordan, Kyrgyzstan, Malawi, Philippines, Poland, Republic of Moldova, Sierra Leone, Slovakia, Slovenia, and Zimbabwe.

(*iii*) *Overdue financial obligations to the Fund*

Bosnia and Herzegovina and Zambia eliminated their protracted arrears (i.e., financial obligations that are overdue by six months or more) to the Fund in 1995. As a result, the number of countries in protracted arrears decreased from eight in 1994 to six (as at 31 December 1995). Of these six members, the following four members remain ineligible to use the general resources of the Fund pursuant to the declarations issued under article XXVI, section 2(a):[241] Liberia, Somalia, Sudan and Zaire.

Following the successful completion of the "rights accumulation programme," Zambia cleared its arrears to the Fund on 20 December 1995, with the help of bridge loans from several members of the Fund.[242] Following this clearance and the lifting of Zambia's ineligibility to use the Fund's resources, the Executive Board approved successor (SAF/ESAF) arrangements totaling SDR 883.4 million, of which SDR 833.4 million was disbursed immediately.

Bosnia and Herzegovina cleared its arrears to the Fund on 20 December 1995 with the help of a bridge loan from another member and succeeded to membership in the Fund. The Fund approved a drawing of SDR 30.3 milion (25 per cent of quota) under the Fund's policy on emergency assistance in post-conflict countries to support the country's economic programme for 1996. The settlement was part of a multilateral collaborative effort to normalize the country's relations with the international community and to lay the foundations for economic reconstruction and development.

(*iv*) *Suspension of voting rights and compulsory withdrawal—Sudan and Zaire*

a. Sudan

The Executive Board decided to suspend the voting and certain related rights of Sudan on 6 August 1993, in accordance with article XXVI, section 2(b). The procedure for compulsory withdrawal from the Fund was initiated on 8 April 1994, in accordance with Article XXVI, section 2(c), by the issuance of a complaint by the Managing Director. During 1995, the complaint was considered by the Executive Board on two occasions, but no further action was taken.

b. Zaire

The Executive Board decided to suspend the voting and certain related rights of Zaire, effective 2 June 1994. The decision to suspend Zaire's voting g rights was reviewed by the Executive Board on 3 August 1995, and it was decided that, unless Zaire resumed active cooperation with the Fund in the areas of policy implementation and payments performance, the Board would consider initiating the procedure for compulsory withdrawal. At the end of 1995, however, no further action had been taken against Zaire.

(*v*) *Annual Meetings*

a. Representation of member countries

Special circumstances in 1995 involving Liberia, Somalia, the Sudan and Zaire raised issues concerning their participation at the 1995 Annual Meetings. There were also issues relating to representation of countries whose member-

ship applications were outstanding or at issue, and attendance of observers to the Annual Meetings, as follows:

• **Liberia**: In March 1995, the Executive Board completed the twelfth post-ineligibility review of Liberia's arrears to the Fund and decided to defer a decision on whether procedure for the suspension of Liberia's voting rights in the Fund should be initiated. After numerous attempts at a peaceful settlement of the civil war, a ceasefire was declared in August 1995 and a new power-sharing agreement was reached among the competing factions. In the light of this situation, the Executive Board decided to invite the Governor and the Alternate Governor, appointed by the Liberian authorities, to attend the Annual Meetings.

• **Somalia**: Owing to the severity of the hostilities confronted in Somalia, the process of government had collapsed. There was no effective government in the country. Accordingly, the Executive Board decided to leave the seat of Somalia unfilled at the 1995 Annual Meetings.

• **Sudan**: In accordance with Schedule L of the Fund's Articles of Agreement, which applied following the suspension of the Sudan's voting rights (pursuant to article XXVI section 2(b)), the Governor and Alternate Governor for Sudan had ceased to hold office. Sudan did thus not participate at the 1995 Annual Meetings.

• **Zaire**: As with the Sudan, in view of the suspension of Zaire's voting rights with effect from 2 June 1994, the Governor and the Alternate Governor appointed by Zaire had ceased to hold office. Representatives of Zaire were therefore not permitted to attend the 1995 Annual Meetings.

b. New and successor members

• **Brunei Darussalam**: As the Executive Board had approved the membership resolution and forwarded it to the Board of Governors for consideration at the Annual Meetings, Brunei Darussalam was invited as an observer. The resolution was approved on the first day of the Meetings.

• **Andorra**: Because Andorra had expressed interest in applying for membership in the Fund, it was invited to attend the Annual Meetings as a special guest.

• **Bosnia and Herzegovina**: In December 1992, the Fund decided that the Socialist Federal Republic of Yugoslavia had ceased to exist as a member and established a mechanism under which, when certain conditions were met, each of its five successor republics could succeed to its membership in the Fund.[243] In accordance with those decisions, the Republic of Croatia, the Republic of Slovenia, and the Former Yugoslav Republic of Macedonia became members of the Fund in 1993. However, as of the 1995 Annual Meetings, Bosnia and Herzegovina and the Federal Republic of Yugoslavia (Serbia and Montenegro) had not become members of the Fund. In view of the pending succession of Bosnia and Herzegovina to membership, representatives of that country were invited to attend the 1995 Annual Meeting as observers. No such invitation was extended to the Federal Republic of Yugoslavia (Serbia and Montenegro).

c. Attendance of observers

Section 5(b) of the Fund's By-Laws provides that the Chairman of the Board of Governors, in consultation with the Executive Board, may invite observers to attend any meeting of the Board of Governors. The list of observers for the 1995

Annual Meetings was the same as in 1994, except for the following modifications and additions: GATT was replaced by the World Trade Organization, while the European Investment Fund (a joint venture between the European Investment Bank, the European Commission and a group of banks and financial institutions from the member countries of the European Union) and the African Export-Import Bank (whose shareholders comprise African Governments, central banks, financial institutions, and private investors as well as foreign financial institutions) were added to the list. The Council of Arab Economic Unity, the Great Lakes Economic Community, the Southern Cone Common Market and the West African Economic Community were removed from the list.

(*b*) Fund facilities

(*i*) *Compensatory and Contingency Financing Facility*

On 20 December, the Executive Board adopted a decision that extended the period within which a member may obtain financial assistance from the Fund under the cereal imports component of the Compensatory and Contingency Financing Facility (CCFF) from 13 January 1996 to 15 January 1997.[244]

(*ii*) *Systemic Transformation Facility*

The Executive Board, on April 29 decided not to extend the Systemic Transformation Facility (STF)[245] beyond 1995. In accordance with the terms of the decision establishing the Facility, the period within which a member could make a first purchase expired on 30 April 1995, and the period within which the second purchase might be made expired on 31 December 1995.

(*iii*) *Enhanced Structural Adjustment Facility*

The Instrument to Establish the ESAF Trust,[246] was amended by the Executive Board to permit the extension of annual arrangements for a period not exceeding six months in cases where (a) an extension is necessary to complete the mid-year review and (b) there is good prospect that the member will achieve the objectives of the programme within the extended period. Moreover, the list of members eligible for assistance under the ESAF Trust Instrument was amended to include Azerbaijan, Eritrea, and the Republic of the Congo.[247]

(*c*) Tenth General Review of Quotas

Article III, section 2(a) of the Fun's Articles of Agreement requires the Board of Governor to conduct a general review of quotas at intervals of not more than five years. Taking into account the date by which the Ninth General Review of Quotas should have been concluded, the five-year period corresponding to the Tenth General Review of Quotas ended on 31 March 1993. In April 1993, the Board of Governors adopted a resolution extending the work on the Tenth General Review of Quotas and requesting the Executive Board to submit a report and proposals by 31 December 1994. The Tenth General Review of Quotas was completed by the Board of Governors on 17 January 1995 (where it endorsed the report by the Executive Board).

In its report, the Executive Board had concluded that the overall size of the Fund for the time being was broadly sufficient to enable the Fund to promote its purposes effectively and to fulfil its central role in the international monetary

system. In reaching this conclusion, the Executive Board had noted that the increased quotas, which had come into effect in 1992 under the Ninth General Review, provided the Fund with substantial useable resources.

(*d*) Guidelines on Performance Criteria with Respect to Foreign Borrowing

The Guidelines on Performance Criteria with respect to Foreign Borrowing[248] were amended by the Executive Board on 25 October 1995. The revised guidelines provided that when the size and rate of growth of external indebtedness is a relevant factor in the design of an adjustment programme, a performance criterion relating to official and officially guaranteed foreign borrowing will be included in upper credit tranche arrangements. The criterion will include foreign loans with maturities of over one year and, in appropriate cases, other financial instruments that have the potential to create substantial external liabilities for Governments. The criterion will usually be formulated in terms of debt contracted or authorized. However, in appropriate cases, it may be formulated in terms of net disbursements or net changes in the stock of external official and officially guaranteed debt. Flexibility will be exercised to ensure that the use of the performance criterion will not discourage capital flows of concessional nature by excluding from the coverage loans defined as concessional on the basis of currency-specific discount rates based on the OECD commercial interest reference rates, and including a grant element of at least 35 per cent, provided that a higher grant element may be required in exceptional cases. Normally, the performance criterion will include a subceiling on foreign debt with maturities of over one year and up to five years. Additionally subceilings may be also included on debt with specified maturities beyond five years or worth a specified grant element lower than 35 per cent.

Under the revised guidelines, the staff is encouraged to include short-term debt of a maturity of less than one year in the performance criteria relating to foreign borrowing, while allowing for some flexibility in the light of the different institutional reporting procedures employed by members and the statistical difficulties in recording that category.

(*e*) Surveillance over Exchange Rate Policies

On 10 April 1995, the Executive Board completed the biennial review of the 1977 Decision on Surveillance over Exchange Rate Policies.[249] The review took place against the background of ongoing systemic changes. In particular, the increased globalization of capital markets and the greater mobility of cross-border capital flows presented new challenges for the Fund's surveillance. The Executive Board noted that the December 1994-95 financial crisis in Mexico had illustrated the speed and intensity with which international capital markets could react to developments in a country and spread their impact to others. It underscored the importance of improving the Fund surveillance so as to prevent such a crisis from recurring. The Executive Board examined the ways of enhancing the effectiveness of surveillance, using the Fund's surveillance experience with Mexico as an illustrative example.

In the light of that review, the Executive Board decided to amend the Principles of Fund Surveillance over Exchange Rate Policies to take account of capital flows more explicitly. Accordingly, the Fund, when conducting its sur-

veillance of members' exchange rate policies, shall consider unsustainable flows of private capital among the developments that might indicate the need for discussion with a member.

Under its revised surveillance policy, the Fund's appraisal of a member's exchange rate policies shall be based on an evaluation of the developments in the member's balance of payments, including the size and sustainability of capital flows, against the background of its reserve position and its external indebtedness. This appraisal shall be made with the framework of a comprehensive analysis of the general economic situation and economic policy strategy of the member, and shall recognize that domestic as well as external policies can contribute to timely adjustment of the balance of payments. Further, the appraisal shall take into account the extent to which the policies of the member, including its exchange rate policies, serve the objective of the continuing development of the orderly underlying conditions that are necessary for financial stability, the promotion of sustained sound economic growth, and reasonable levels of employment.

(*f*) Technical assistance-establishment of a Framework Administered Account

Pursuant to article V, section 2(b), of the Fund's Articles of Agreement, the Executive Board decided, on 31 April 1995, to establish an administered account[250] for the administration, by the Fund, of resources contributed by Governments and official agencies of countries and intergovernmental organization for the purpose of technical assistance activities (including seminars for training of officials in recipient countries). These contributions may take the form of grants or concessional loans and may be used by the Fund for technical assistance activities consistent with its purposes in accordance with the Instrument annexed to the Decision. Under the Framework Account, separate subaccounts will be established to administer the contributions by individual countries.

(*g*) Valuation of the Special Drawing Right (SDR)

(*i*) *Revision of SDR valuation basket*

The list of currencies, and the respective weights on the currencies that determine the value of SDR, were reviewed by the Executive Board on 25 September 1995.[251] The Executive Board decided that, effective 1 January 1996, the list of currencies in the valuation basket shall remain unchanged. With respect to the weight of each of these currencies to be used to calculate the amount of each of these currencies in the basket, it was decided to adjust the weigh by subtracting 1 per cent from the weight of the United States dollar and adding 1 per cent to the weight of the Japanese yen, as follows:

Currency	*Weight (per cent)*
United States dollar	39
Deutsche mark	21
Japanese yen	18
French franc	11
Pound sterling	11

(*ii*) *Valuation of SDR*

Following the Revision of the SDR valuation basket, the Executive Board on 29 December 1995 decided to amend rule O-1 of the Fund's Rules and Regulations concerning the valuation of the SDR. It was decided that the value of the SDR shall be the sum of the values of the following amounts of the following currencies:

Currency	
United States Dollar	0.582
Deutsche mark	0.446
Japanese yen	27.2
French franc	0.813
Pound sterling	0.105

(*h*) Collaboration with the Would Trade Organization

In January 1995, the Executive Board discussed the relationship between the World Trade Organization and the Fund. Executive Directors emphasized the importance of close, constructive cooperation between the two institutions, and noted that, although they had different mandates, the Fund and WTO should be mutually supportive. A three-stage process in the development of relations between the Fund and WTO was broadly endorsed by Executive Directors. The first stage established transitional arrangements for continuing Fund participation in the new WTO Committee on Balance of Payments Restrictions in consultation on trade measures taken to safeguard the balance of payments. The second stage would consider specific modalities for closer cooperation, with a view to designing a cooperation agreement for working relations between the institutions, including issues related to observer status and the exchange of documents and information. In the third stage WTO and the Fund would discuss in greater detail areas that were not fully resolved in stage two or which may need more time to define, such as issues related to "global coherence in economic policy making", as stated in the WTO Charter.

7. INTERNATIONAL CIVIL AVIATION ORGANIZATION

(*a*) Privileges, immunities and facilities

Ninety-three States have undertaken to apply to ICAO the Convention on the Privileges and Immunities of the Specialized Agencies adopted by the United Nations General Assembly in November 1947.[252] No additional State undertook to apply the Convention to ICAO during 1995.

(*b*) Convention on International Civil Aviation[253]

Palau adhered to the Convention on International Civil Aviation on 4 October 1995, bringing the number of Contracting States to 184. The number of parties to the International Air Services Transit Agreement rose to 110 with the

deposit of instruments of acceptance by the former Yugoslav Republic of Macedonia (succession), the Democratic People's Republic of Korea, Slovakia (succession), Croatia (succession), Estonia, Palau, Antigua and Barbuda (succession), Bosnia and Herzegovina (succession) and Slovenia (succession). The number of parties to the International Air Transport Agreement remained unchanged at 11.

(*c*) Registration of agreements and arrangements

In 1995, the total number of agreements and arrangements registered with the Organization pursuant to Article 83 of the Convention rose by 31 to 3,946.

(*d*) Legal meetings

During the 31st session of the ICAO General Assembly, the Legal Commission held three meetings from 28 September to 2 October 1995, to discuss, *inter alia*, the work programme of ICAO in the legal field (see below) and the privileges and immunities of ICAO. Noting that there were 102 parties to the Convention on the Privileges and Immunities of the Specialized Agencies, the Commission decided to invite the Assembly to appeal again to all contracting states which had not done so to become parties to the Convention. The Assembly approved the decision.

A Diplomatic Conference held in Montreal from 25 to 29 September 1995 adopted the authentic text of the Convention on International Civil Aviation and of the Amendments thereto in the Arabic Language.

A regional legal seminar on air law, attended by States from the Asia and Pacific region, was held in Bangkok from 11 to 13 January 1995 to discuss major issues and challenges in the legal field.

(*e*) Work programme of the Legal Committee

Pursuant to a decision of the Assembly at its 31st session of the Council at its 146th Session, the General Work Programme of the Legal Committee is as follows:

(i) Consideration, with regard to global navigation satellite systems (GNSS), of the establishment of a legal framework;

(ii) Modernization of the Warsaw System and review of the question of ratification of international air law instruments;

(iii) Liability rules which might be applicable to air traffic service (ATS) providers as well as to other potentially liable parties—liability of air traffic control agencies;

(iv) 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.

Regarding the first item, the Assembly decided that the Council should establish a panel of legal and technical experts on the establishment of a legal framework with regard to global navigation satellite systems (GNSS) on 6 December 1995, the Council established the panel, which will meet in November 1996.

On the second item, the Council on 15 November 1995 agreed that a secretariat study group should be established to assist the Legal Bureau in developing a mechanism within the framework of ICAO to accelerate the modernization of the Warsaw System. The Study Group was subsequently established by the Secretariat.

(*f*) Collection of national aviation laws and regulations

The collection of national aviation laws and regulations in the Legal Bureau was maintained up to date on the basis of material received from States.

8. UNIVERSAL POSTAL UNION

(*a*) Legal status, privileges and immunities of the Universal Postal Union

No changes have been made to the conventions which currently govern the legal status, privileges and immunities of the organization.

With respect to the Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the United Nations General Assembly, 96 member States extend the privileges and immunities provided for in that Convention to UPU, representatives of member States, staff members of the International Bureau of UPU and experts.

(*b*) Seoul Congress

At the request of the participants in the 1994 Seoul Congress, the Council of Administration began to study a number of legal issues in 1995. This work is still under way and will probably continue for the next two years, in view of its importance. The main issues under examination are the following:

(*i*) *Study of the legal, regulatory, technological and commercial environment in relation to the single postal territory*

Under article 1 of the Constitution of the Universal Postal Union, the States members of UPU comprise a single postal territory for the reciprocal exchange of letter-post items. The trend towards increased deregulation, liberalization and competition in many countries, as well as the globalization of trade, are gradually changing the legal and commercial environment to which postal administrations had been accustomed. The Universal Postal Union has undertaken a study of the legal, regulatory and commercial repercussions on its own single-territory model.

(*ii*) *Study of the relationship between certain international agreements and the concept of free circulation of postal items*

The aim, in particular, is to study the compatibility between international trade agreements and the provisions of the organic Acts of UPU concerning *inter alia*, the free circulation of postal items.

(*iii*) *The status of UPU members and the representation of the parties involved in postal activity*

In view of the changes which have taken place in the postal communications market, such as the emergence of strong competition, the Universal Postal Union considers that it should begin now to reflect on its positioning in that market and on the situation of the other parties involved in postal activity, especially in terms of reciprocal relations at the international level, and to study, in particular,the conditions on which other actors, users and consumers, employees and regulatory bodies could become more closely associated with the work of the Union so that the latter may become a forum for expression an debate by all parties involved in postal activity.

(*iv*) *Mission of the Universal Postal Union*

Taking into account the consequences of the development of competition, the liberalization of trade in services and the need to consider the interests of all the parties involved in postal activity, the Seoul Congress of 1994 instructed the UPU Council of Administration to conduct an in-depth review of the mission of UPU. Without calling into question the purpose of UPU, as defined in its Constitution, the Congress considered that the Union's mission should be adapted to the new competitive environment.

(*v*) *Revision of the Acts*

In the context of the restructuring of the organs of the Union, it was decided that some of the legislative functions of the Congress should be transferred to the two permanent organs of UPU: The Council of Administration and the Postal Operations Council. To that end, it was necessary to revise the Acts. This process was begun at the Seoul Congress and is still underway. The primary objective of this revision is, on the one hand, to make it possible to modify the regulations quickly without waiting for the approval of the Congress, and on the other, to produce clear, simple and flexible texts on the provision of client services.

9. INTERNATIONAL TELECOMMUNICATION UNION

(*a*) Membership of ITU

During 1995, no new States become Members of ITU. In the preceding year, two new States had become Members of the Union: Kyrgyzstan, and Tajikistan. As of 31 December 1995, there were 184 Members of the Union

In the course of 1995, 13 Member States ratified and 4 Members acceded to the Constitution and the Convention of ITU[254] had been adopted in 1992 in Geneva. As of the end of the year, 79 Members had either ratified or acceded to those instruments. Further, in 1995, 3 Members ratified the instruments amending the ITU Constitution and Convention (Geneva, 1992) which had been adopted by the Plenipotentiary Conference of ITU (Kyoto, 1994).

(*b*) Legislative matters

The Council

The annual session of the ITU Council was held at ITU headquarters in June 1995. The session was attended by representatives of the 46 Members that were elected to the Council. Among the major actions by the Council was the adoption of its new working methods and structures and the approval of the first biennial budget of the union, replacing the old practice under which budgets were submitted and approved annually. The Council also resolved to convene the first World Telecommunication Policy Forum in Geneva in 1996 to discuss the theme "Global Mobile Personal Communications by Satellite".

(*c*) Legal assistance and advice

The Legal Service, which became the Legal Affairs Unit (JUR) on 1 January 1992, first within the External Relations Department and then in the Office of the Secretary-General, has continued to perform activities which have remained, in substance, similar to past years. The Legal Affairs Unit carried out studies and provided legal opinions on a broad range of documents in order to enable the Secretary-General to exercise fully his functions as legal representative of the Union in its relations with the Governments of States Members of the Union, other international organizations and the host country. The Legal Affairs Unit has also exercised the legal functions entrusted to the Secretary-General in his role as depository for international treaties and agreements. The Legal Affairs Unit was closely involved in preparatory negotiations concerning the construction of a new ITU office building and in an increasing number of issues involving copyright and intellectual property arising from the expanding activities of the Union in electronic publishing and multimedia. The Unit was actively involved in negotiations with the host country regarding the implications for ITU and for the Telecom 95 Exhibition, of the introduction of a value-added tax in Switzerland.

In addition, the Unit conducted studies and provided legal opinions in respect of all types of documents and in a wide variety of areas, including general public international law, telecommunications law, treaty law, matters related to personnel, finance, development, privileges and immunities, and the purchase and rental of equipment and services. It has also participated actively in drafting revisions to the Staff Regulations and Staff Rules. In addition, the Legal Affairs Unit has been extensively involved in preparing the numerous contracts and agreements reached within the framework of the Union pursuant to the holding of regional and world telecommunication exhibitions. Finally, the Unit participated in the work of many conferences and meetings of the Union, especially the World Radiocommunication Conference.

(*d*) World Radiocommunication Conference

The World Radiocommunication Conference (WRC-95) was held in Geneva in October 1995 with the participation of 1,223 delegates from 140 countries, as well as observers from the United Nations, international organizations and specialized agencies. The Conference was convened in response to resolution 3 of the Plenipotentiary Conference of ITU (Kyoto, 1994).

In conformity with its terms of reference agenda, the Conference adopted a simplified, partial revision of the Radio Regulations and appendices thereto, as contained in the Final Acts of WRC-95. The Radio Regulations are binding international instruments, with the force of international treaties, as they form part of the administrative regulations of ITU which are expressly reference in and complement the Constitution and the Convention of the Union. WRC-95 also made significant decisions concerning the use of non-geostationary orbits by mobile satellite services for mobile communications. The final Acts of the Conference were signed by the delegates of 130 Members of ITU. The revised provisions of the Radio Regulations shall apply as of 1 June 1995, while certain specified provisions shall apply provisionally as of 1 January 1997.

10. INTERNATIONAL MARITIME ORGANIZAITON

(*a*) Membership of the Organization

During 1995, the following countries become Members of the International Maritime Organization: South Africa (28 February 1995), Azerbaijan (15 May 1995) and Lithuania (7 December 1995). As at 31 December 1995, the number of Members of IMO was therefore 153. There are also two Associate Members.

(*b*) Review of legal activities of IMO[255]

(*i*) *Liability for damage caused by hazardous and noxious substances*

a. Draft HNS convention

The Legal Committee concluded its work on a draft International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (draft HNS Convention) at its seventy-second session in April 1995. The Committee recommended that the draft should be forwarded to a diplomatic conference for consideration and adoption in the spring of 1996

The HNS Convention establishes a system of compensation for liability for damage caused by hazardous and noxious substances. It covers in principle all kinds of hazardous and noxious substances and defined its scope of application by reference to existing lists of such substances, such as the International Maritime Dangerous Goods Code (the (IMDG Code) and Annex II to MAROPOL. It goes further in its scope than the oil pollution compensation regime in that it covers not only pollution but also the risks of fire and explosion.

It consists of a two-tier system, providing for strict liability of the shipowner, which should be covered by compulsory insurance. This is supplemented by a second tier, the HNS Fund, financed by cargo interests. In principle, compensation will be paid from the HNS Fund when the shipowner's liability is insufficient to provide full compensation or when no liability arises under the first tier. Contribution to the second tier will be levied on persons in the Contracting States who receive a certain minimum quantity of HNS cargo during a calendar year. The tier will consist of one general account for chemicals and two or three separate accounts. The system with separate accounts had been seen as a way to avoid cross-subsidization between different HNS substances.

The general account would include two sectors, the first with contributions in respect of gaseous, liquid and solid chemicals, the second from large volume and low hazard substances. It was agreed that the separate accounts for liquefied natural gas (LNG) and within square brackets, liquefied petroleum gas (LPG), would be named in the draft.

b. Defition of HNS cargo

The Legal Committee noted the extensive practical difficulties which would be caused by the incorporation of a free-standing list including all substances referred to in the draft. These difficulties arise not only from the high number of substances (approximately 6,000) but also from the fact that the lists mentioned in article 1, 5(a) were updated on a regular basis. In view of the explanations, the Committee decided that HNS substances should be defined by referenced to the existing lists rather than by reference to a free-standing list.

The Committee's discussions were inconclusive with regard to the inclusion or exclusion from the scope of the draft Convention of specific substances such as radioactive materials and coal and other low hazard bulk cargo.

Many delegations supported the exclusion of coal from the draft HNS Convention, indicating that reliable statistics showed that coal could not cause any damage to the environment or outside the ship. Other delegations favoured the retention of coal, pointing out that coal had been included in the draft not only to compensate for HNS damage to the environment but also to cover fire and explosion risks. The Committee agreed to include two alternative texts, one of which would exclude coal and one based on the retention of coal, within square brackets in the draft convention. The final decision on the inclusion or exclusion of those substances would be left for the Diplomatic Conference.

c. Other outstanding issues

The Committee recalled that linking the HNS Convention to general limitation treaties and existing national limitation regimes had been proposed in order to respond to the need to make better use of the available insurance capacity. A compromise to enable States party to the HNS Convention to remain party to the other limitation conventions was discussed. Those States would however, have to ensure that supplementary compensation was provided to fill any potential gap in the first tier caused by this linkage without increasing the liabilities of the second tier. The Committee decided that informal consultations should continue with a view of reaching decisions regarding the linkage with other limitation regimes.

d. Diplomatic conference

At its seventy-fourth session, in June 1995, the IMO Council unanimously endorsed the recommendation of the Legal Committee that a diplomatic conference of three weeks' duration should be convened in early 1996 to consider the adoption of the draft HNS Convention as well as the draft Protocol to the 1976 Convention on Limitation of Liability for Maritime Claims. The IMO Assembly, at its nineteenth regular session, in November 1995, confirmed the decision.

(*ii*) *Consideration of the revision of the Convention on Limitation of Liability for Maritime Claims, 1976*[256]

The Legal Committee continued with the consideration of a draft protocol to amend the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC) with a view to concluding the work in time to submit the draft for consideration and adoption by the HNS Conference 1996. The Committee had confirmed at its previous session that the scope of revision should extend only to the limits and procedures for amendments.

The Committee addressed the issue of updating the limits of compensation for passenger claims to correspond to the Protocol of 1990 to amend the Athens Convention relating to the Carriage of Passenger s and their Luggage by Sea, 1974 (Athens Convention).[258] There was overwhelming support for removing the overall ceiling per incident in respect of passenger claims for death and personal injury. The deletion would have the effect that individual passenger claims would only be limited in accordance with the Athens Convention and corresponding regimes. The Committee further agreed that States parties should be permitted to set higher limits of liability for personal injury or loss of life in respect of passengers than those prescribed in the draft Protocol.

In the light of the recent ferry tragedy in the Baltic, it was suggested that the introduction of compulsory insurance should be considered to ensure that sufficient compensation would be available. However, it was noted that this matter, which would require careful consideration as well as consultation with the insurance industry, has been raised too late to be dealt with in the ongoing revisions of the Convention.

At its seventy-second session (3 to 7 April 1995), the Committee unanimously agreed to recommend to the IMO Council that the Diplomatic Conference to be convened to consider the draft HNS Convention should also deal with the draft Protocol to the 1976 LLMC. The recommendation was endorsed by the Council at its seventy-fourth session.

(*iii*) *Technical Cooperation subprogramme for maritime legislation*

The Committee noted the information and progress report on the implementation of the subprogramme for maritime legislation in the Integrated Technical Cooperation Programme from January to June 1995.

(*iv*) *Draft convention on wreck removal.*

At its seventy-third session in October 1995, the Legal Committee received the text of a draft international convention on wreck removal prepared by Germany, the Netherlands and the United Kingdom of Great Britain and Northern Ireland. Most delegations regarded the subject of wreck removal as important for the Committee and one which should receive high priority. The Committee, therefore, decided to include the subject in its work programme for 1996.

(*v*) *Compensation for pollution from ships' bunkers*

The Legal Committee at its seventy-third session considered a number of submissions on the issue of compensation for pollution from ships' bunkers. In one of them, attention was drawn to the overriding concern to provide a mecha-

nism by which coastal States can be assured that all visiting vessels have the means to compensate States for bunker oil damage.

In another submission reference was made to the significant number of potentially disastrous incidents which had taken place involving oil pollution caused by ships' bunkers and also to experience which had shown that spills of oil from non-tankers could be just as damaging and costly as those covered by the regime created by the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971. Sponsoring delegations were therefore seeking the commitment of the Legal Committee to include as a matter of high priority the development of free-standing compensation regime for damage caused by the bunkers of non-tankers. It was suggested that the regime should follow the precedents set by CLC and draft as far as practicable and, in particular, provide for strict liability and compulsory insurance cover.

The Committee decided that the subject should be considered on a priority basis and it was included in the Work Programme for 1996.

(*vi*) *Compulsory insurance*

At its seventy-first session in October 1994, the Legal Committee in the light of discussions on the limitation of liability for passenger claims, agreed to include the subject of compulsory insurance in its work programme for the 1996-1997 biennium. The Committee at its seventy-third session decided to retain the subject as one of the priority subjects in its 1996 work programme.

(*vii*) *Consideration of the possible review of the International Convention for the Unification of Certain Rules relating to the Arrest of Seagoing Ships, 1952*[261]

The Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects, established by the International Maritime Organization and the United Nations Conference on Trade and Development, held its eighth session at the headquarters of the International Maritime Organization.

London, from 9 to 10 October 1995 and considered the possible review of the International Convention for the Unification of Certain Rules relating to the Arrest of Sea-going Ships, 1952.

The Group started to consider a set of revised draft articles prepared by the secretariats of UNCTAD and IMO and decided to continue with its consideration at its next session to be held at UNCTAD, Geneva, from 2 to 6 December 1996.

(*viii*) *Salvage Convention, 1989*[262]

The Committee considered submissions by Greenpeace International and the International Salvage Union concerning the Salvage Convention, 1989, one relating to the definition of damage to the environment (article 1), and the other to claims for special compensation (article 14) and the geographic restriction with regard to the application of the special compensation provisions.

The Committee was requested to amend the Convention or to give a uniform interpretation to define all offshore areas as being adjacent to coastal areas. Most delegations were of the view that it was not appropriate to initiate any amendment procedure. Regarding the uniform interpretation requested, many delegations were of the view that was a matter for the parties to the Salvage Convention.

The Committee agreed that the matter had not received sufficient support to be included in the work programme. However it was suggested that interested delegations could bring it up later under the agenda item "Any other business".

(*ix*) *Consideration of a draft convention on offshore mobile craft*

At its seventy-third session (October 1995) the Legal Committee recalled that at its seventy-second session in April 1995, it had given preliminary consideration to a new draft convention on offshore mobile craft (the "Sydney draft") prepared by the Committee Maritime International (CMI). It was noted that most States already treated offshore mobile craft as ships for purposes of national maritime law. The Legal Committee did not consider the subject as a high priority, particularly as CMI had indicated that there might be further work on it by CMI.

(*x*) *Treaties*

International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel[263]

An International Conference on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995, convened, in consultation with the Director-General of the International Labour Office, to consider and adopt an International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, was held at IMO headquarters from 26 June to 7 July 1995.

The Conference was attended by representatives of 74 States, observers from one Associate member, representatives from two organizations of the United Nations system and observers from four intergovernmental organizations and nine non-governmental organizations in consultative status.

As a result of its deliberations, the Conference adopted the International Convention on Standards of Training, Certification and Watchkeeping of Fishing Vessel Personnel (STCW-F), 1995.

The Conference decided that the Convention was to be deposited with the Secretary-General of IMIO. The Secretary-General and the Organization were assigned certain responsibilities in respect of the Convention.

The Convention was opened for signature at IMO headquarters from 1 January 1996 to 30 September 1996 and will thereafter remain open for accession.

(xi) Amendments to treaties

a. 1995 Revision of International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978,

Pursuant to the decision of parties to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, made during the sixty-second session (24 to 28 May 1993) of the Maritime Safety Committee and subsequent decisions by the IMO Council and Assembly, a Conference of Parties to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarer, 1978, convened, in consultation with the Director-General of the International Labour Office, to consider and adopt amendments to the annex to the 1978 STCW Convention and an associated Seafarer's Training Certification and Watchkeeping (STCW) Code was held at the headquarters of the organization from 26 June to 7 July 1995.

As a result of its deliberations the Conference adopted amendments to the Annex to the International Convention on Standard of Training, Certification and Watchkeeping (STCW) Code.

The STCW Convention had for some time been regarded as technically out of date. Criticisms also had been made that vague language gave rise to different interpretations, resulting in non-uniform application of the Convention, and that it did not impose strict obligations on parties regarding implementation.

The amendments represent a major revision of the Convention. One of the key features is the adoption of the new STCW Code to which many of the technical regulations have been transferred. Part of the Code is mandatory part of it contains recommendations only. This is intended to simply its administration as well as future amendments.

The amendments to the Annex oblige parties to provide detailed information to IMO concerning administrative measures taken to ensure compliance with the Convention, education and training courses, certification procedures and other factors relevant to implementation. This information will be used by the Maritime Safety Committee to identify parties that are able to demonstrate that they can give full and complete effect to the Convention. Other Parties will on the basis be able to accept that certificates issued by those parties are in compliance with the Convention.

The amendments are expected to enter into force on 1 February 1997 under the tacit acceptance procedure.

b. 1995 Amendments to the International Convention for the Safety of Life at Sea, 1974[264] (Chapter V/8; Ships' Routing)

The Maritime Safety Committee at its sixty-fifth session adopted by resolution MSC.46(65) amendments to chapter V of the 1974 SOLAS Convention. These amendment and provisions of regulation V/8 on ships' routing. Consequential amendments to the General Provisions on Ships' Routing were also adopted. These amendments are expected to enter into force on 1 January 1997 provided they are deemed to have been accepted on 1 July 1996 in accordance with the provisions of article VIII of the SOLAS Convention.

c. 1995 Amendments to the International Convention for the Safety of Life at Sea, 1974 (Chapters II-1, 11-2, III, IV and V; Ro-Ro Passenger Ships)

Pursuant to the decisions of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 1974) attending the Maritime Safety Committee at its sixty-fifth session and the Council of the Organization at its seventy-fourth session, a four-day conference to consider and adopt a number of amendments to the 1974 SOLAS Convention aimed at enhancing the safety of roll-on/roll-off passenger ships was convened at IMO headquarters on 20, 27, 28 and 29 November 1995.

The Conference was attended by representatives from 83 Contracting Governments to SOLAS 1974, observers from 9 Contracting Governments and from 5 States which are not Contracting Governments, an observer from one Associate Member of the Organization and observers from 3 intergovernmental organizations and 15 non-governmental organizations.

As a result of its deliberation the Conference adopted amendments to the following chapters;

Chapter II-I: Construction—subdivision and stability, machinery and electrical installations;

Chapter II-2: Construction—fire protection, fire detection and fire extinction;

Chapter III: Life-saving appliances and arrangements;

Chapter IV: Radio communications

Chapter V: Safety of navigation

The Conference also adopted 14 resolutions.

The most important of the changes concerned the stability of ro-ro passenger ships. The Conference agreed to significantly upgrade the damage stability requirement to be applied to all existing ro-ro passenger ships.

The Conference further adopted a resolution which permits regional arrangements to be made on special safety requirements for ro-ro passenger ships. The resolution acknowledges the desire of certain SOLAS Contracting Governments that, having regard to the prevailing sea conditions and other local conditions, special stability requirements should apply to all ro-ro passenger ships undertaking regularly scheduled voyages between designated ports of those Contracting Governments, and agrees that two or more Contracting Governments may conclude agreements modifying safety requirements in respect of such ships.

Governments proposing an agreement will have to notify the Secretary-General of IMO of their intention to negotiate an agreement and shall make appropriate arrangements for other interested Contracting Governments to be involved in the negotiations.

The amendments are expected to enter into force under the Conventions' tacit acceptance procedure on 1 July 1997.

d. 1995 Amendments to the International Convention for the Prevention of Pollution from Ships, 1973,[265] as modified by the Protocol of 1978 relating thereto[266]

The Marine Environment Protection Committee at its thirty-seventh session (September 1995) by its resolution MEPC.65(37) adopted amendments to the International convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78).

The amendments to Annex V of MARPOL 73/78, which, *inter alia*, add new regulation 9 entitled "Placards, waste management plans and garbage record keeping", thus provided a basis for the enforce of the requirements of Annex V. The amendments are expected to enter into force on 1 July 1997. The requirements apply to existing ships as from 1 July 1998.

e. 1995 Amendments to the International Convention on Load lines, 1966[267]

On 23 November 1995, the IMO Assembly by its resolution A.784(19) adopted amendments to regulation 49(7)(b) of the Convention, together with consequential changes to the chart of zones and seasonal areas.

In accordance with article 29(3)(c) of the Convention, the amendments, if adopted by the Assembly, shall come into force 12 months after the date on which they are accepted by two thirds of Contracting Governments.

(*xii*) *Entry into force instruments and amendments*

a. Instruments

Protocol of 1992 to amend the International Convention of Civil Liability for Oil Pollution Damage, 1969

Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971

The conditions for the entry into force of 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 Convent on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 were met on 30 May 1995 with the deposit of instruments of ratification by Denmark. In accordance with the relevant articles the Protocols with enter into force on 30 May 1996.

International Convention on Salvage, 1989

The conditions for the entry into force of the International Convention on Salvage, 1989 were met on 14 July 1995 with the deposit of an instrument of ratification by Italy. In accordance with article 29 the Convention will enter into force on 14 July 1996.

International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990[268]

The conditions for the entry into force of this Convention were met on 13 May 1994 with the deposit of an instrument of accession by Mexico. In accordance with Article 16, the Convention entered into force on 13 May 1995.

b. Amendments

1993 amendments to the Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended

These amendments to the Convention were adopted by the Assembly on 4 November 1993 by resolution A.736(18). The conditions for their entry into force were met on 4 May 1994 and the amendments entered into force on 4 November 1995 for all Contracting parties except Tunisia.

1994 (chapters V, II-2) amendments to the International Convention for the Safety of Life at Sea, 1974

These amendments were adopted by the Maritime Safety Committee on 23 May 1994 by resolution MSC.31(63). The conditions for the entry into force of the amendments set out in annex 1 to the resolution were met on 1 July 1995 and the amendments will enter into force on 1 January 1996.

1994 (new chapters IX, X and XI) amendments to the International Convention for the Safety of Life at Sea, 1974

These amendments were adopted by the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 on 24 May 1994 by resolution 1 of the Conference. The conditions for the entry into force of the amendments set out in annex 1 to the resolution were met on 1 July 1995 and the amendments will enter into force on 1 January 1996.

1994 amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978

These amendments were adopted by the Maritime Safety Committee on 23 May 1994 by resolution MSC.33(63). The conditions for their entry into force were met on 1 July 1995 and the amendments will enter into force on 1 January 1996.

1994 (Annexes I, II, III and V) amendments to the Annex to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973,

These amendments were adopted by the Conference of Parties to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, on 2 November 1994. The conditions for their entry into force were met on 3 September 1995 and the amendments will enter into force on 3 March 1996.

11. WORD INTELLECTUAL PROPERTY ORGANIZATION

The year 1995 witnessed the further expansion WIPO activities in its three main fields of work: cooperation with developing countries in the strengthening of their intellectual property systems (development cooperation), promotion of the adoption of new, or the revision of existing, norms for the protection of intellectual property at the national, regional and multilateral levels (norm-setting), and facilitating the acquisition of intellectual property protection, through international registration systems (registration activities).

(*a*) Development cooperation

Compared to 1994, WIPO's *cooperation with developing countries* quickened its pace; there was a 14 per cent increase in the number of beneficiary developing countries to 123, while the number advisory mission grew by 19 per cent to 200. The human resource development activities of the Organization benefited close to 100,000 people, who participated in some 120 courses and seminars. With the approval of the Governing Bodies, the International Bureau began, in October 1995, an intensive programme of assistance to developing countries in their preparations for the implementation of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS Agreement). This new activity covers, in particular, advice and assistance on intellectual property laws to ensure their compatibility with the TRIPS Agreement, as well as the holding of seminars to explain the Agreement to lawmakers, government officials and private sector circles. A highlight of this new type of activity was the holding, in Cairo, in December, of a three-day WIPO Regional Symposium for Arab Countries on the Implications of the TRIPS Agreement. Panel discussions were led by the Director General of WIPO, with the participation of international experts, including an official of the World Trade Organization. It was the first of series of projected regional meetings entirely devoted to the subject.

The Governing Bodies of WIPO decided to double the development cooperation budget in the Organization's 1996-97 regular budget, compared to the 1994-1995 regular budget. The increase will facilitate the satisfaction of the increasing needs of assistance of developing countries in the development and strengthening of their intellectual property systems in view of their obligations under the TRIPS Agreement, an area in respect of which the Governing Bodies gave WIPO the mandate to provide increased legal-technical assistance to those countries.

(*b*) Norm-setting

Significant advances were made towards the possible convocation, in the 1996-1997 biennium, of diplomatic conferences for the adoption of new international instruments in the areas of copyright and neighbouring rights, harmonization of patent laws and industrial designs.

The September/October Governing Bodies of WIPO decided that in the forthcoming biennium WIPO would also study various questions of special or topical interest, including the protection of well-known and famous marks, business identifiers, the recordings and indicating of trademark licences, the legal effects of certain electronic communications in procedures before industrial property offices, the protection of inventions and creations made or used in outer space, enforcement of intellectual property rights, biotechnological inventions and trade secrets. WIPO would organize two or three global symposia on topical subjects of intellectual property. Furthermore, the Governing Bodies agreed to create the WIPO Standing Advisory Committee on the Intellectual Property Aspects of the Global Information Infrastructure, which would meet to consider the intellectual property aspects of the operation of the so-called global information infrastructure (interactive digital networks, digital superhighways, etc.).

Finally, the year 1995 was particularly marked by the conclusion of a cooperation Agreement between WIPO and WTO, which entered into force on 1 January 1996.

Furthermore, international forums continued to be organized by WIPO for the exchange of ideas among interested circles on topical intellectual property subjects, such as the impact of digital technology on copyright, the utilization of CD-ROM technology for the storage and dissemination of industrial property information, arbitration and mediation procedures for the settlement of intellectual property disputes among private parties and the introduction and management of automation in industrial property offices.

(*c*) Registration activities

The continuous high rate of growth in the use of the Patent Cooperation Treaty (owing, in part, to particularly significant increase of its membership in 1995) resulted in a record number of almost 39,000 international applications filed in 1995 (representing an increase of about 14 per cent as compared to 1994), while in the areas of trademarks and industrial designs, there was an increase of about 8 per cent and 3 per cent, respectively, in the number of registrations under the Madrid Agreement[269] and of deposits, renewals and prolongations under the Hague Agreement concerning the International Deposit of Industrial Designs.[270]

The Protocol relating to the Madrid Agreement concerning the International Registration of Marks[271] went into effect in December 1995. Operations under this Protocol will start on 1 April 1996.

This continuous expansion of WIPO's activities in the areas mentioned above was reflected in the adoption, by the WIPO Governing Bodies in September/October of a programme and budget for the 1996-97 biennium with an income and expenditure of about 300 million Swiss francs, with a projected ratio of the income of contribution-financed Unions to that of free-financed Unions of about 15 per cent to 85 per cent

The growing importance attached to the effective protection of intellectual property was further underlined by increased membership of the WIPO, Paris and Berne Conventions. During the period under review, the number of member States increased from 150 to 157 for WIPO, from 127 to 136 for the Paris Convention and from 110 to 117 for the Berne Convention.

(*d*) Development cooperation activities

A total of 123 (108 in 1994) developing countries, two Territories and 12 intergovernmental organizations of developing countries benefited from WIPO's development cooperation programme in the fields of industrial property and copyright and neighbouring rights. One hundred and twenty courses, seminars or other meetings were held at the global or national levels, giving training or information to some 9,500 (9,000 in 1994) men and women coming from the government and private sectors. The travel and living expenses of some 1,100 men and women were borne by WIPO, donor member States of WIPO and intergovernmental organizations. Study visits were organized for 89 persons.

As for WIPO advisory missions relating to legislation and institution-building, 200 such missions were undertaken to 75 developing countries. The enactment of laws or the revision of existing ones remained one of the prime objectives of such missions. In most instances those missions took place after the International Bureau had prepared and sent to the interested national authorities draft laws or provisions, often with accompanying commentaries. The draft laws took full account of the relevant provisions of the TRIPS Agreement. As follow-up to such missions, officials were later invited to Geneva to finalize those drafts. The International Bureau prepared at the request of the Group of African States based in Geneva, a study on the compatibility of the national intellectual property laws of a number of African States with the provisions of the TRIPS Agreement. Such studies and advice were also provided on request for individual countries. In addition, in July, the International Bureau completed a draft study on the implications of the TRIPS Agreement for the treaties administered by WIPO. The aim of the paper was to elucidate for the information of developing countries the possible changes in obligations of States that were party to the said Agreement and to WIPO treaties.

With regard to institution-building, the missions focused mainly on the streamlining and computerization of administrative procedures in industrial property offices and on the use of CD-ROM technology in disseminating and accessing the industrial property information. A number of such advisory missions also gave on-the-job training to government officials or supervised the installation of computer equipment and software. Each mission was composed of WIPO officials and/or specially recruited WIPO consultants. In total, 276 consultants were engaged either for advisory missions or as speakers in courses and seminars, 36 per cent of them coming from developing countries (an increase of 13 per cent compared to 1994).

The WIPO Academy conducted two two-week sessions each for middle- and senior-level government officials, one in English and one in French. The aim of each session was to present, for reflection and discussion, current intellectual property issues in such a way as to highlight the policy considerations behind them and thereby enable the participants in the Academy, on their return to their countries, to better formulate appropriate policies for their Governments.

Cooperation with developing countries at the regional or subregional level was further strengthened, as shown by the closer dialogue and cooperation with such organizations as the African Regional Industrial Property Organization (ARIPO), the Association of South-East Asian Nations (ASEAN), the Board of the Cartegena Agreement (JUNAC), the Southern Common Market

(MERCOSUR), the African Intellectual Property Organization (OAPI), the Organization of African Unity (OAU), and the Permanent Secretariat of the General Treaty on Central American Economic Integration (SIECA).

In carrying out its development cooperation programme, WIPO received financial support, or support in kind, from 90 countries, both developing and industrialized, one Territory and 10 intergovernmental organizations. The donor countries which provided funds in trust for the programme were France, Japan and Sweden, and the main donor intergovernmental organizations were the United Nations Development Programme, the European Patent Office and the Commission of the European Communities.

The trend of increasing resources from the WIPO regular budget for development cooperation activities was markedly reinforced for the coming 1996-1997 biennium, with the October decision of the Governing Bodies to double, compared to the 1994-1995 biennium, allocations for developing cooperation activities, including assistance to developing countries in respect of the implementation of the TRIPS Agreement in view of the expanded programme of work adopted for the 1996-1997 biennium.

(*e*) Normsetting activities

The period under review was characterized by substantial advances towards the possible adoption, through a diplomatic conference, of new international instruments in the fields of patents, industrial designs, copyright and neighbouring rights and the settlement of intellectual property disputes among States. On the other hand, new work commenced in respect of the question of a more effective protection of well-known marks. Prepared n this regard, a new Committee of Experts was convened by WIPO to examine the results of a study by the International Bureau on the subject and prospects for improving the protection of this category of marks.

With respect to patents, the WIPO Governing Bodies agreed to take a new approach in promoting the harmonization of patent laws and also agreed that, as proposed by the consultative Meeting held in May, future work should focus on matters concerning the formalities in respect of national and regional patent applications, such as signatures, changes in names and addresses, and correction of mistakes, and standardized forms. A Committee of Experts on the Patent Law Treaty held its first session in December and reviewed the proposals made by the International Bureau under the new approach.

Regarding copyright and neighbouring rights, work advanced in particular in respect of issues related to: (*a*) the possible adoption of a protocol to the Berne Convention (including computer programs and databases, non-voluntary licences for the sound recording of musical works and for primary broadcasting and satellite communication); and (*b*) the possible adoption of a new instrument for the protection of rights of performers and producers of phonograms (including moral rights of performers, economic rights of performers and of producers of phonograms, terms of protection), as well as in respect of issues which might be considered "common" to the two groups of issues, such as distribution right, importation right and rental right issues, the so-called digital agenda, enforcement of rights, and national treatment. A work programme in respect of these three groups of issues was defined by the Committee of Experts on a Possible

Protocol to the Berne Convention and the Committee of Experts on a Possible Instrument for the Protection of the Rights of Performers and Producers of Phonograms at their joint meeting in September in Geneva.

As particularly concerns the impact of digital technology on copyright, high-level and open international forums for the exchange of ideas on this issue were provided by WIPO during the period under review, through the organization of the Worldwide Symposium on Copyright in the Global Information Infrastructure held in Mexico City in May, in cooperation with the Mexican authorities, and the World Forum on the Protection of Intellectual Property Creations in the Information Society held in Naples, in October in cooperation with the Italian authorities. A Consultative Forum for Non-governmental Organizations on the Protection and Management of Copyright and Neighbouring Rights in Digital Systems was also organized in Geneva in June to give the non-governmental organizations involved in the international debate on the subject an opportunity to express their views.

(*f*) Registration activities

Compared to 1994 the number of registrations in the three international registration systems increased in 1995.

Under the Patent Cooperation Treaty (PCT),[272] 38,906 international applications filed, representing a growth of 14.08 per cent compared to 1994 (34,104). Of these 1,151 applications were filed directly with the International Bureau in its capacity as a receiving office. As an average of 46.4 countries were designated per application, one may consider that the 38,906 international applications were equivalent to some 1,807,220 national applications.

In the Madrid trademark system, the total number of international registrations was 18,890, representing an increase of 8.02 per cent compared to 1994 (17,486). As an average of 10.44 countries were designated per application, one may equally consider that the 18,890 international applications were equivalent to some 197,210 national applications.

Having obtained the required number of notifications, the Madrid Protocol entered into force on 1 December 1995. On 31 December 1995, the following nine States had deposited their instrument of accession or ratification: China, Cuba, Denmark, Finland, Germany, Norway, Spain Sweden, United Kingdom of Great Britain and Northern Ireland. Draft Common Regulations under the Madrid Agreement and Protocol were finalized by the International Bureau during the period under review, for approval by the Madrid Assembly.

The Madrid Assembly adopted the Common Regulations including the Schedule of Fees, which entered into force on 1 April 1996, the date on which the Protocol also entered into operation. That date coincides with the date of entry into operation of the Community Trademark system.

In the Hague industrial design system, the combined total of industrial design deposits renewals and prolongations was 5,592, representing an increase of 2.7 per cent in relation to the 1994 figure (5,446).

In October, revised schedules of fees were adopted by the PCT and Hague Assemblies. In the case of the PCT system, the maximum number of designations for which fees are payable was increased from 10 to 11. Also, the PCT

Assembly approved a 75 per cent reduction in PCT fees for any applicant who is a natural person and a national of and resident in a country whose per capita national income is below US$ 3,000. In the case of the Hague system, the fees were increased by 3 per cent.

(*g*) Countries in transition to a market-economy system

By 31 December 1995, nine States (Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Republic of Moldova, Russian Federation, Tajikistan, Turkmenistan) had deposited with the Director General of WIPO their instrument of accession to, or ratification of, the Eurasian Patent Convention. The draft of the Convention had been prepared with assistance of the International Bureau of WIPO. The Convention, which had been finalized, adopted and initialed in Geneva in February 1994 and done at Moscow on 9 September 1994 entered into force on 12 August 1995. In November, the Administrative Council of the Eurasian Patent Organization adopted the patent administrative and financial instructions under the Convention and fixed 1 January 1996 ad the starting date of operations under the Convention. That was the date as from which the Eurasian Patent Office (established under the Convention and located in Moscow) receives Eurasian patent applications and Eurasian patents could be sought in international applications under the Patent Cooperation Treaty.

Technical cooperation with countries in transition to a market economy system also quickened its pace. In 1995, nine national and regional seminars and other meetings in the fields of industrial property and copyright and neighbouring rights were organized by WIPO in those countries for some 700 individuals from government and other interested circles. Governments Leaders and officials from most of those countries held consultations in Geneva with Director General and other WIPO officials and studied the International Bureau's work, while WIPO officials and consultants undertook 29 missions to 17 of those countries to give advice, in particular, on the preparation of laws with one or more aspects of intellectual property (including the implications of the TRIPS Agreement on national legislation), the advantages of adherence to WIPO-administered treaties and the establishment or strengthening of national infrastructures for the administration intellectual property rights as well as to provide on the job training in various specialized fields of intellectual properly. In several instances, following the missions, WIPO prepared and sent to the governments concerned draft laws and or regulations, often with commentaries. Training of staff of the national offices of those countries was also undertaken through 15 study visits to industrial property offices in industrialized countries.

(*h*) Cooperation with the World Trade Organization

The year 1995 was also marked by the signature, on 22 December of a Cooperation Agreement between WIPO and WTO. The conclusion of the Agreement was the culmination of a process started in September/October 1994 and pursued in 1995 through, among other things, two meetings (in February and May) of the ad hoc working group established by the WIPO General Assembly in September/October 1994 to, *inter alia*, "advise and cooperate with the Director General of WIPO in his contacts with the competent organs of GATT/WTO", the preparation, by the International Bureau of WIPO and, in the period between October and December, intensive negotiations between, on one side, the

WIPO Coordination Committee and, on the other side, the Council for TRIPS of WTO. Also, an extraordinary session of the WIPO Budget Committee was convened by WIPO in November to examine the financial implications of the draft Agreement.

The Agreement includes provisions related to the process of notifications of laws and regulations under article 63(2) TRIPS Agreement (including the accessibility to, and the translation of, those laws and regulations), the implementation of article 6*ter* of the Paris Convention for the Protection of Industrial Property for the purpose of the TRIPS Agreement.

(*i*) New adherence to treaties

In 1995, the number of States party to treaties administered by WIPO continued to increase. The following States become party to, *inter alia*, the following treaties (figures in brackets indicate the total number of States party to the treaties as at 31 December 1995):

WIPO Convention:[274] Azerbaijan, Bahrain, Cambodia, Nigeria, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Turkmenistan (157);

Paris Convention: Albania, Azerbaijan, Costa Rica, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Turkmenistan, Venezuela (136);

Berne Convention:[275] Georgia, Haiti, Latvia, Republic of Moldova, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Ukraine (117);

Budapest Treaty:[276] China (35);

Rome Convention:[277] Bulgaria, Republic of Moldova, Venezuela (50);

Geneva (Phonograms) Convention:[278] Bulgaria (53);

Brussels (Satellites) Convention:[279] Portugal (20);

Strasbourg Agreement:[280] Canada, Cuba, Malawi, Trinidad and Tobago, Turkey (33);

Vienna Agreement:[281] Trinidad and Tobago, Turkey (7);

Nice Agreement:[282] Cuba, Iceland, Malawi, Trinidad and Tobago, Turkey (46);

Locarno Agreement:[283] Iceland, Malawi, Trinidad and Tobago (25);

Patent Cooperation Treaty: Albania, Azerbaijan, Lesotho, The former Yugoslav Republic of Macedonia, Turkey, Turkmenistan (83);

Madrid (International Registration of Marks) Agreement: Albania, Azerbaijan, Liberia (46);

Madrid Protocol: China, Cuba, Denmark, Finland, Germany, Norway, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland (9).

(*j*) WIPO Arbitration Centre

Throughout 1995, the newly created WIPO Arbitration Centre undertook a number of promotional activities on the features and advantages of this new service, including jointly organizing with the Swiss Arbitration Association an international conference on the WIPO mediation, arbitration and expedited arbitration rules, as well as organizing two training programmes for mediators.

The second Meeting of the WIPO Arbitration Council, held in September, reviewed the activities of the Centre since September 1994 and studied a draft proposal to introduce an emergency interim arbitral procedure, available at 24 hours' notice.

(*k*) Director General

In October, the General Assembly appointed Dr. Arpad Bogsch unanimously and by acclamation Director General of WIPO for an additional period of two years, expiring on 1 December 1997.

12. INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT

(*a*) Membership

Approval of application for non-original membership

As its Eighteenth Session (25-27 January 1995), the Governing Council approved the non-original membership in IFAD of the Republic of Georgia and decided that that State should be classified as a member of category III in accordance with articles 3.2(b) and 13.1(c) of the Agreement establishing IFAD and section 10 of the By-Laws for the Conduct of the Business of the Fund.

(*b*) Review of IFAD's resources requirements and related governance issues

Amendment of the Agreement Establishing IFAD, the By-laws for the Conduct of the Business of IFAD and other Basic Legal Instruments of the Fund

The Governing Council, at its Eighteenth Session, adopted, on 26 January 1995, resolution 86/XVII on the Amendment of the Agreement Establishing IFAD, the By-laws for the Conduct of the Business of IFAD and other Basic Legal Instruments of the Fund, on the Basis of the report and recommendations of the Special Committee on IFAD's Resources Requirements and Related Governance Issues (see *Juridical Yearbook, 1994*). The resolution:

(i) Approved the report and recommendations of the Special Committee on IFAD's Resource Requirements and Related Governance issues with the principles specified therein;

(ii) Accordingly amended:

The Agreement Establishing IFAD;

The By-laws for the Conduct of the Business of IFAD;

The Rules and Procedure of the Governing Council;

Governing Council Resolution 77/2

The Rules of Procedure of the Executive Board;

Other Official IFAD documents.

The above-mentioned amendments to the Agreement Establishing IFAD will enter into force on the completion of the Resolution on the Fourth Replenishment of IFAD's resources by the Executive Board in accordance with paragraph III of that Resolution. The amendments to the By-laws for the Conduct of the Business of IFAD, the Rules of Procedure of the Governing Council and Governing Council resolution 77/2 will enter into force on the date on which the amendments to the Agreement Establishing IFAD entered into force.

(*c*) Resolution on the Fourth Replenishment of IFAD's Resources

At its Eighteenth Session, the Governing Council adopted Resolution 887/XVIII on the Fourth Replenishment of IFAD's Resources. Paragraph III of the resolution states:

> "The Executive Board, taking into account the report of the President of IFAD, is requested to take action by its Fifty-Fifth Session (in September 1995) to complete this resolution in accordance with its provisions, including the allocation of the amounts of pledged contributions in Attachment A hereto. The Executive Board shall take such action only at the moment that pledges shall have been received equalling at least ninety per cent (90 per cent) of the four hundred and twenty million dollars US$ 420,000,000) target of the former category I member countries and eight-five percent (85 per cent) of the combined one hundred and fifty million dollars (US$ 150,000,000) target of the former category II and III member countries. In the event that such pledges do not reach the above mentioned target levels, the Executive Board shall then recommend what further action shall be taken in a report to the Governing Council."

While adopting the above resolution, member states ere encouraged to take the opportunity afforded by the Resolution to achieve the overall target level of US$ 600 million for the Fourth Replenishment of IFAD's Resources.

(*d*) Amendment of the lending policies and criteria

The Governing Council, at its Eighteenth Session, decided to further amend IFAD's lending polices and criteria. Resolution 89/XVIII added an annex to the document on "A Framework for Sector/Sub-sector Allocation: Principles Revisited" and added a new paragraph 24A, which reads as follows:

> "24A. The recommended allocation of IFAD's future lending by region shall be established periodically by the Executive Board, on the understanding that such allocations were indicative figures and shall be applied flexibly, keeping in mind the necessity to give priority attention to sub-Saharan Africa and that there may be annual fluctuations which will be evened out on a cumulative average basis. The allocation to any single recipient country shall not exceed ten percent (10 per cent) of IFAD's total annual lending, or such other percent as may be determined by the Executive Board, to be applied flexibly depending on resource availability."

13. WORLD TRADE ORGANIZATION

(*a*) Membership

The Marrakech Agreement Establishing the World Trade Organization (WTO Agreement) entered into force on 1 January 1995. The following 76 States and separate customs territories were original members as of the date of the entry into force: Antigua and Barbuda, Argentina, Australia, Austria, Bahrain, Bangladesh, Barbados, Belgium, Belize, Brazil, Brunei Darussalam, Canada, Chile, Costa Rica, Côte D'Ivoire, Czech Republic, Denmark, Dominica, European Communities, Finland, France, Gabon, Germany, Ghana, Greece, Guyana, Honduras, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Italy, Japan, Kenya, Kuwait, Luxembourg, Macau, Malaysia, Malta, Mauritius, Mexico, Morocco, Myanmar, Namibia, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Paraguay, Peru, Philippines, Portugal, Republic of Korea, Romania, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Singapore, Slovakia, South Africa, Spain, Sri Lanka, Suriname, Swaziland, Sweden, Thailand, Uganda, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela, and Zambia. During 1995, the following 36 States additionally become original members pursuant to article XI of the WTO Agreement: Trinidad and Tobago, Zimbabwe, Dominican Republic, Jamaica, Turkey, Tunisia, Cuba, Israel, Colombia, El Salvador, Burkina Faso, Egypt, Botswana, Central African Republic, Djibouti, Guinea Bissau, Lesotho, Malawi, Mali, Maldives, Mauritania, Togo, Poland, Switzerland, Guatemala, Burundi, Sierra Leone, Cyprus, Slovenia, Mozambique, Liechtenstein, Nicaragua, Bolivia, Guinea, Madagascar and Cameroon. No State or separate customs territory acceded to the WTO Agreement during 1995. At the end of the year, membership of the WTO stood at 112.

(*b*) Dispute settlement

The Understanding on Rules and Procedures governing the Settlement of Disputes (DSU) and the Dispute Settlement Body (DSB) became operational in 1 January 1995. In February 1995, DSB established the Appellate body pursuant to article 17.1 of the DSU. In December 1995, the following persons were appointed as members of the Appellate Body: James Bacchus (United States), Christopher Beeby (New Zealand), Claus-Dieter Ehlermann (Germany), Siad El-Naggar ((Egypt), Justice Florentino P. Feliciano (Philippines), Julio Lacarte Muro (Uruguay), and Mitsuo Matsushita (JamJapan).

During 1995, 25 requests for consultations were received pursuant to article 4 of the DSBU. DSB established panels regarding the following cases:

United States—Standards for Reformulated and Conventional Gasoline, complaints by Venezuela (WT/DS2) and (WT/DS4);

European Communities—Trade Description of Scallops, complaints by Canada (WT/DS7), Peru (WT/DS12) and Chile (WT/DS14);

Japan—Taxes on Alcoholic Beverages, complaints by the European Communities (WT/DS8), Canada (WT/DS10) and the United States (WT/DS11);

European Communities—Duties on Imports of Cereals, complaint by Canada (WT/DS9).

14. INTERNATIAONL ATOMIC ENERGY AGENCY

Privileges and immunities

During 1995 there was no change in the status of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency.[284] At the end of 1995, there were 65 parties.

Convention on the Physical Protection of Nuclear Material[285]

During 1995, one State—Peru—became a party, bringing the total at year end to 53.

Convention on Early Notification of a Nuclear Accident[286]
Convention Assistance in the Case of a Nuclear Accident or Radiological Emergency[287]

During 1995, Peru adhered to the Notification Convention. By the end of 1995, there were 75 States parties.

In 1995, Peru also adhered to the Convention on Assistance, bringing the total number of parties to 71 by year end.

Vienna Convention on Civil Liability for Nuclear Damage, 1963[288]

During 1995, Latvia and Slovakia adhered, bringing the total number of parties to 26 by the end of the year.

Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention[289]

Latvia, Slovakia, and Slovenia became parties during the year, making a total of 20 by the end of 1995.

African Regional Cooperative Agreement[290]

The extension of the African Regional Cooperative Agreement for Research, Development and Training related to Nuclear Energy (AFRA) entered into force on 4 April 1995 on expiration of the original Agreement. It was accepted by the following 18 States of the region: Algeria, Cameroon, Egypt, Ethiopia, Ghana, Kenya, Madagascar, Mauritius, Morocco, Namibia, Niger, Nigeria, Sierra Leone, South Africa, Sudan, Tunisia, United Republic of Tanzania and Zaire.

Regional Cooperative Agreement for Research, Development and Training related to Nuclear Science and technology, 1987 (RCA Agreement)291

There was no change during 1995, the total number of States parties remaining at 17.

Safeguards Agreements

During 1995, Safeguards Agreements were concluded between IAEA and two States pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons:[292] Republic of Moldova and Slovenia. An agreement was also concluded with the Government of Barbados pursuant to the Non-Proliferation Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco).

Agreements between Belarus[293] and Bolivia (Non-Proliferation Treaty and Tlateloco Treaty),[294] Chile (Tlatelolco Treaty),[295] Croatia,[296] Kazakhstan,[297] Myanmar[298] and the Zimbabwe[299] entered into force in 1995. A *sui generis* comprehensive Safeguards Agreement between Ukraine and IAEA for the application of Safeguards to all Nuclear Material in all Peaceful Nuclear Activities of Ukraine also entered into force.[300]

By the end of 1995, there were 207 Safeguards Agreements in force with 125 States, 105 of which agreements were concluded pursuant to the Non-Proliferation Treaty and/or the Treaty of Tlatelolco with 108 non-nuclear-weapon States. Voluntary offer agreements are in force with all five nuclear-weapon States.

Liability for Nuclear damage

The Standing Committee on Liability for Nuclear Damage continued its examination of the revision of the Vienna Convention and elaboration of an instrument for supplementary funding. The committee adopted, with the exception of liability amounts, and reservations to some provisions, a full set of draft tests for an amending protocol to the Vienna Convention. The draft amendments cover important areas where a need for improvement was recognized, such as: the geographical scope of the Convention; its application to military installations; the concept of nuclear damage; increase of operator liability and provision of an Installation State tier; and extended time limits for the submission of claims.

On the question of supplementary funding, two basic approaches were under consideration. One provides for a convention that will operate within the legal framework of the Vienna and Paris Conventions and cover both transboundary and domestic nuclear damage. The other approach envisages a free-standing convention which is open to adherence irrespective of participation in the Vienna or Paris Conventions and is dedicated to transboundary nuclear damage only. As there was not consensus on either approach, efforts were made to reconcile them into a single draft. Thus, there would be a free standing instrument whose system was supplementary to national legislation that (a) implements the Vienna or Paris Conventions, or (b) would be consistent with the requirements set out in an annex to the draft convention which restate the major liability norms of the two conventions. A single supplementary fund would cover domestic and transboundary damage on the basis of a specified ratio. Contributions by States parties to the fund would be based on a formula which took into account their nuclear capacity and their rate of assessment to the United Nations regular budget. The position of non-nuclear States was also taken into account.

A convergence of views appeared to be possible on the form and many provisions of the new draft. Also, in informal consultations, elements of the structure of the supplementary fund were identified as a basis for further work.

On the basis of the progress made, the Standing Committee at its 13th session concluded that it seemed feasible to prepare texts for the amending protocol to the Vienna Convention, as well as convention on supplementary funding to be submitted at a diplomatic conference. The goal of the Committee was to complete its preparatory work before the end of 1996.

NOTES

[1]For detailed information, see *The United Nations Disarmament Yearbook*, vol. 20: 1995 (United Nations publication, Sales No. E.96. 1X.1).

[2]See *Status of Multilateral Arms Regulation and Disarmament Agreements*, Fourth edition: 1992, vol. I (United Nations publication, Sales No. E.93. 1X.11 (Vol.1)).

[3]Adopted by a recorded vote of 161 to none, with 2 abstentions.

[4]Full title: Treaty Banning Nuclear Weapon Tests, see *Status of Multilateral Arms Regulation and Disarmament Agreements*, Fourth edition: 1992, vol. I (United Nations publication, Sales No. E.93. 1X.11 (Vol.1)).

[5]Namely, Treaty on the Limitation of Underground Nuclear Weapon Tests and Treaty on Underground Nuclear Explosions for Peaceful Purposes, both of which entered into force in 1990.

[6]Adopted by a recorded vote of 166 to none, with 1 abstention.

[7]Adopted by a recorded vote of 85 to 18, with 43 abstentions.

[8]Adopted by a recorded vote of 110 to 4, with 45 abstentions.

[9]Adopted by a recorded vote of 122 to none, with 44 abstentions.

[10]Established by the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco), Concluded in 1967: United Nations, *Treaty Series*, vol. 634, p. 281.

[11]Established by the South Pacific Nuclear Free Zone Treaty (Treaty of Rarotonga), concluded in 1985: United Nations, *Treaty Series*, vol. 1445, p.177.

[12]Adopted without a vote.

[13]Adopted by a recorded vote of 154 to 3, with 9 abstentions.

[14]Adopted without a vote.

[15]Adopted without a vote.

[16]General Assembly resolution 2826 (XXVI), annex. Concluded in 1971 and entered into force in 1975.

[17]CD/CW/WP.400/Rev. 1; see also *International Legal Materials*, vol. XXXII (1993), p. 800.

[18]Adopted without a vote.

[19]Adopted without a vote.

[20]A/50/547 and Corr.1 and Add. 1-4.

[21]A/50/60-S/1995/1, paras. 60-65; see *Official Records of the Security Council, Fiftieth Year, Supplement for January, February, and March 1995*, Document S/1995/1, paras. 60-65.

[22]See *Status of Multilateral Arms Regulation and Disarmament Agreements*, Fourth edition: 1992 (United Nations publication, Sales No. E.93.1.11) vol. 1.

[23]Adopted by a recorded vote of 149 to non, with 15 abstentions.

[24]Adopted by a recorded vote of 140 to none, with 19 abstentions.

[25]Adopted without a vote.

[26]Adopted without a vote.

[27]Adopted without a vote.

[28]Adopted without a vote.

[29]Adopted by a recorded vote of 157 to 4, with 2 abstentions.

[30]Adopted by a recorded vote of 121 to none, with 46 abstentions.

[31]For the report of the Subcommittee, see A/AC.105/607 and Corr.1.

[32]See questionnaire: ibid., annex I, appendix.
[33]See working papers: ibid., annex III, sects. B and C.
[34]For the report of the Committee, see *Official Records of the General Assembly, Fiftieth Session*, *Supplement No. 20* (A/50/20).
[35]Adopted without a vote.
[36]See A/50/604.
[37]*Official Records of the General Assembly, Fiftieth Session, Supplement No. 20* (A/50/20).
[38]Ibid. sect. II.C.
[39]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).
[40]Adopted without a vote.
[41]See A/50/607.
[42]A/50/60-S/1995/1; see *Official Records of the Security Council, Fiftieth Year, Supplement for January, February and March 1995*, document S/1995/1.
[43]*Official Records of the Security Council, Fiftieth Year, Resolutions and Decisions of the Security Council, 1995*, document S/PRST/1995/9.
[44]A/49/681.
[45]A/50/230.
[46]For the report of the Governing Council, see *Official Records of the General Assembly, Fiftieth Session, Supplement No. 25* (A/50/25).
[47]For the texts of the decisions adopted by the UNEP Governing Council at its eighteenth session, see ibid., annex.
[48]UNEP/GC.18/23 and Corr. 1 and Add. 1 and 2.
[49]Adopted without a vote.
[50]See A/50/618/Add.6.
[51]Adopted without a vote.
[52]See A/50/618/Add. 1.
[53]See United Nations Environment Programme, *Convention on Biological Diversity* (Environmental Law and Institution Programme Activity Centre), June 1992.
[54]A/50/218.
[55]Adopted without a vote.
[56]See A/50/618/Add.1.
[57]A/49/84/Add.2, annex, appendix II.
[58]Adopted without a vote.
[59]See A/50/618/Add. 3.
[60]A/AC.2379/91 and Add. 1.
[61]A/50/536, annex.
[62]FCCC/CP/1995/7 and Add. 1.
[63]United Nations, *Treaty Series*, vol. 520, p.151.
[64]Ibid., vol. 1019, p. 175.
[65]Ibid., vol. 976, pg. 3.
[66]Ibid., p. 105.
[67]E/CONF. 82/15 and Corr. 2; issued also as a United Nations publication (Sales No. E. 91.X1.6.).
[68]Adopted without a vote.
[69]See A/50/631.
[70]General Assembly resolution S-17/2, annex.
[71]See A/49/139-E/1994/57.
[72]Adopted without a vote; see A/50/629.
[73]A/CONF. 169/16
[74]A/50/432.
[75]A/50/433.
[76]A/50/375.
[77]E/CN.15/1995/9 and Add.1.
[78]United Nations, *Treaty Series*, vol. 993, p.3.

[79]Ibid., vol. 999, p. 171.
[80]Ibid.
[81]General Assembly resolution 44/128, annex.
[82]Adopted without a vote.
[83]See A/50/635/Add. 1.
[84]*Official Records of the General Assembly, Forty-ninth Session, Supplement No. 40* (A/49/40).
[85]Ibid., *Fiftieth Session and Supplement No. 40* (A/50/40).
[86]*Official Records of the Economic and Social Council, 1995, Supplement No. 2 and corrigendum* (E/1995/22 and Corr. 1).
[87]General Assembly resolution 2103 A (XX), annex; reproduced in *Juridical Yearbook, 1965*, p.63; see also United Nations, *Treaty Series*, vol. 660, p.195.
[88]Adopted without a vote.
[89]See A/50/626.
[90]A/50/467, annex.
[91]A/50/18.
[92]General Assembly resolution 3068 (XXVIII), annexx; reproduced in *Juridical Yearbook, 1973*, p.70; see also United Nations, *Treaty Series*, vol. 1015, p. 243.
[93]General Assembly resolution 34/180, annex; reproduced in *Juridical Yearbook, 1979*, p. 115; see also United Nations, *Treaty Series*, vol. 1249, p.13.
[94]Adopted without a vote.
[95]See A/50/816.
[96]General Assembly resolution 39/46, annex; also reproduced in *Juridical Yearbook, 1984*, p. 135.
[97]General Assembly resolution 44/45, annex.
[98]Adopted without a vote.
[99]See A/50/633.
[100]CRC/C/38.
[101]General Assembly resolution 45/158, annex.
[102]Adopted without a vote.
[103]See A/50/Add. 1.
[104]A/50/469.
[105]Adopted without a vote.
[106]See A/50/635/Add. 1.
[107]A/50/505, annex.
[108]A/CONF.157/PC/62/Add. 11/Rev. 1.
[109]Adopted without a vote.
[110]See A/50/635/Add.2.
[111]A/50/635.
[112]Adopted without a vote.
[113]See A/50/635/Add.
[114]Adopted by a recorded vote of 91 to 57, with 21 abstentions.
[115]See A/50/635/Add. 2.
[116]A/CONF.157/24 (part I), chap. III.
[117]Adopted by a recorded vote of 156 to none, with 15 abstentions.
[118]See A/50/635/Add. 2.
[119]A/CONF.157/24 (part I), chap. III, sect. II, para. 67.
[120]A/50/736.
[121]United Nations, *Treaty Series*, vol. 189, p. 137.
[122]Ibid, vol. 606, p. 267.
[123]Ibid., vol. 606, p.360, p. 117.
[124]Ibid., vol. 989, p.175.
[125]Adopted without a vote.
[126]See A/50/632.
[127]*Official Record of the General Assembly, Fiftieth Session, Supplement No. 12* (A/50/12).
[128]Ibid., *Supplement No. 12A*, (A/50/12/Add. 1).
[129]A/CONF.177/20 and Add. 1, chap. 1, resolution 1, annex II.
[130]A/50/365-S/1995/728; see *Official Records of the Security Council, Fiftieth Year, Supplement for July, August and September 1995*, document S/1995/728. See also chapter VII of this *Yearbook*.
[131]Adopted by recorded vote of 124 to none, with 24 abstentions.

[132]See A/50/L. 28 and Add.1.

[133]For detailed information, see the 1995 report of the Secretary-General on the Law of the Sea (A/50/713).

[134]*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.

[135]A/50/713, paras. 55-58.

[136]Ibid., paras. 23-31.

[137]Adopted by a recorded vote of 132 to 1, with 3 abstentions.

[138]See A/50/L. 34 and Add. 1.

[139]For the composition of the Court, see General Assembly decision 50/319.

[140]As of 31 December 1995, the number of States recognizing the jurisdiction of the Court as compulsory, in accordance with declarations filed under Article 36, paragraph 2, of the Statue of the International Court of Justice, increased by one, bringing the total to 61.

[141]For detailed information, see *International Court of Justice Yearbook, 1994-1995*, No. 49 and *International Court of Justice, Yearbook, 1995-1996*, No. 50.

[142]*I.C.J. Reports 1995*, p.90.

[143]*I.C.J. Reports 1954*, p.19.

[144]*I.C.J. Reports 1995*, pp. 107-118, 119-128, 129-134 and 135-138.

[145]Ibid., pp. 139-223 and 224-277.

[146]Ibid., pp.423.

[147]Ibid., pp.6.

[148]Ibid., pp.27-39, 40-50, 51-66, 67-73 and 74-78.

[149]Ibid., p.83.

[150]*I.C.J. Reports 1996*, p.6.

[151]*I.C.J. Reports 1995*, pp.282 and 285.

[152]Ibid., p.80.

[153]Ibid., p. 279

[154]*I.C.J. Reports 1994*, p. 151.

[155]Ibid., p.105.

[156]*I.C.J. Reports 1995*, p.87.

[157]Ibid., p.288.

[158]*I.C.J. Reports 1974*, p. 467, para. 31.

[159]Ibid., pp.466, para.29.

[160]Ibid., p.469, para. 55.

[161]Ibid., p.475, para. 55.

[162]Ibid., p.477, para. 62.

[163]*I.C.J. Reports 1995*, pp. 309, 310 and 311.

[164]Ibid., pp.312-316.

[165]Ibid., pp.317-362, 363-380, 381-421.

[166]Ibid., p.3.

[167]*Official Records of the General Assembly, Fiftieth Session, Supplement No. 4* (A/do/4).

[168]For the membership of the International Law Commission, see *Official Records of the General Assembly, Fiftieth Session, Supplement No. 10* (A/50/10), chap. I, sect. A.

[169]For detailed information, see *Official Records of the General Assembly, Fiftieth Session, Supplement No. 10* (A/50/10).

[170]A/CN. 4/466 and Corr. 1.

[171]A/CN. 4/L. 506 and Corr.1.

[172]A/CN. 4/467.

[173]A/CN. 4/469 and Corr. 1 and Add. 1 and 2.

[174]A/CN. 4/468.

[175]A/CN. 4/471.

[176]A/CN. 4/470 and Corr. 1 and 2.

[177]Adopted without a vote.

[178]See A/50/638.

[179]*Official Records of the General Assembly, Fiftieth Session, Supplement No. 10* (A/50/10).

[180]For the membership of the United Nations Commission on International Trade Law, see *Official Records of the General Assembly, Fiftieth Session, Supplement No. 17* (A/50/17), chap. I, sect. B.

[181]For detailed information, see *Yearbook of the United Nations Commission on International Trade Law*, vol. XXVI: 1995 United Nations publication and Sales No. E.96.V.8).

[182]See comments in document A/CN.9/409 and Add. 1 to 4.

[183]A/CN. 9/410.

[184]A/CN. 9/412.

[185]A/CN9/SER. C/ABSTRACTS/4, 5 and 6.

[186]Adopted without a vote; see A/50/640 and Corr. 1.

[187]For the text of the Convention, see chap. IV of this *Yearbook*.

[188]Adopted without a vote; see A/50/637.

[189]A/50/726.

[190]Adopted without a vote; see A/d0/637.

[191]A/50/368 and Add. 1-3.

[192]The proceedings of the United Nations Congress are contained in: *International Law as a Language for International Relations* (United Nations publication Sales No. T.96.V.4).

[193]Adopted without a vote; see A/50/639.

[194]*Official Records of the General Assembly, Fiftieth Session, Supplement No. 22* (A/50/22).

[195]Adopted without a vote; see A/50/641.

[196]*Official Records of the General Assembly, Fiftieth Session, Supplement No. 26* (A/50/22).

[197]A/AC. 154/277.

[198]Adopted without a vote; see A/50/642 and Corr. 1.

[199]*Official Records of the General Assembly, Fiftieth Session, Supplement No. 33* (A/50/33), chap. V, sect. A.

[200]Adopted without a vote; see A/50/642 and Corr. 1.

[201]A/50/361.

[202]Adopted by a recorded vote of 155 to none, with 3 abstentions; see A/50/642 and Corr.1.

[203]Official Records of the General Assembly, Fiftieth Session, Supplement No. 33 (A/50/33).

[204]Adopted without a vote; see A/50/643.

[205]A/50/372 and Add. 1.

[206]Adopted without a vote; see A/50/645.

[207]A/C.6/49/2.

[208]Adopted without a vote; see A/50/646.

[209]A/50/142.

[210]See *Official Records of the General Assembly, Fiftieth Session, Supplement No. 1* (A/49/1).

[211]See A/50/644, para. 7.

[212]*Official Records of the General Assembly, Forty-fourth Session Supplement No. 10* (A/44/10), chap. II.D.

[213]For detailed information, see *Official Records of the General Assembly, Fiftieth Session, Supplement No. 14* (A/51/14). This report of the Acting Executive Director of UNITAR covers the period from 1 July 1994 to 30 June 1996.

[214]Adopted without a vote.

[215]See A/50/620.

[216]ILC, 82nd Session, 1995, *Record of Proceedings*, nos. 1, 11, 14 (p.1); English,, French, Spanish; *Official Bulletin* of the ILO, vol. LXXVIII, Series A, No. 2, pp.42-43; English, French, Spanish.

[217]*Official Bulletin* of the ILO, vol. LXXVIII, 1995, Series A, No. 2, pp. 18-33; English French, Spanish. (Information on the preparatory work for the adoption of instruments, which, by virtue of the double discussion procedure, normally covers a period of two years, is given in order to facilitate reference work.) Regarding the preparatory work, see: *First discussion*—Safety and Health in Mines, ILC, 81st Session (1994); Report V(1) and V(2), 67 and 69 pages respectively; Arabic, Chinese, English, French, German, Russian, Spanish. See also ILC, 81st Session (1994), *Record of Proceedings*, No.26; No. 28, pp.2-6; English, French, Spanish. *Second discussion*—Safety and Health in Mines, ILC, 82nd Session (1995); Report IV (1), Report IV (2A), Report IV (2B); 19, 69 and 32 pages respectively; Arabic, Chinese, English, French, German, Russian, Spanish. See also ILC,

82nd Session (1995), *Record of Proceedings*, No. 19, No. 26, p.3; English, French, Spanish.

[218]*Official Bulletin* of the ILO, v. LXXVIII, Series A, N. 2, pp. 33-36; English, French, Spanish; *Single Discussion*: Protocol to the Labour Inspection Convention, 1947: ILC, 82nd Session, 1995, Report VI (1), Report VI(2), 51 and 86 pages respectively; Arabic, Chinese, English, French, German, Russian, Spanish. See also ILC, 82nd Session (1995), *Record of Proceedings*, No. 20; No. 23, pp. 1-5; English, French, Spanish.

[219]This report has been published as Report III (Part 4) to the 82nd Session of the Confernece (1995) and comprise two volumes: vol. A, General Report and Observations concerning particular countries (Report III (Part 4A), xvii + 460 pages; English, French, Spanish) and vol. B, General Survey of the Termination of Employment Convention (No. 158) (Report III (Part 4B), xi + 157 pages; English, French, Spanish).

[220]This report has been published as Report III (Part 4) to the 83rd Session of the Conference (1996) and comprises two volumes: vol. A, General Report and Observations concerning particular countries (Report III (Part 4A), xvi + 449 pages; English, French, Spanish) and vol. B, General Survey of Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111), 1958 (Report III (Part 4B), ix + 133 pages; English, French, Spanish).

[221]GB.263/5/1, GB.265/12/8; English, French, Spanish.

[222]GB.264/17/1.; English, French, Spanish.

[223]GB.265/13/1; English, French, Spanish.

[224]GB.264/17/2; English, French, Spanish.

[225]GB.265/13/3; English, French, Spanish.

[226]GB.265/13/2; English, French, Spanish.

[227]GB.265/13/4; English, French, Spanish.

[228]*Official Bulletin* of the ILO, vol. LXXVIII, 1995, Series B, No.1, English, French, Spanish.

[229]Ibid., vol. LXXVIII, 1995, Series B, No.2; English, French, Spanish.

[230]Ibid., vol. LXXVIII, 1995, Series B, No.2; English, French, Spanish.

[231]GB.262/WP/SDL/Inf.1; GB.262/WP/DSL/Inf.2; GB.262/WP/SDL/Inf.4; Gb.262/WP/SDL/1/2; Gb.262/WP/SDL/RP; English, French, Spanish.

[232]GB.264/WP/SDL/1; GB.264/14; English, French, Spanish.

[233]GB.264/LILS/WP/PRS/1; GB.264/LILS/4; GB.264/9/2; English, French, Spanish.

[234]Offical Bulletin of ILO, vol. LXXVIII, 1995, Series A, No. 3 (to be published); English, French, Spanish.

[235]United Nations, *Treaty Series*, vol. 943. p.178.

[236]For details on the establishment of the Inspection Panel, see *Juridical Yearbook, 1993* p.___.

[237]For details on the inspections, please see the report of the Inspection Panel for the period from 1 August 1994 to 31 July 1996, published for the Inspection Panel by the World Bank, Washington D.C., 1996.

[238]*International Legal Materials*, vol. XXIV, p. 1605.

[239]The text of the ICSID Convention is reproduced in *Judicial Yearbook, 1966*, p.196.

[240]A member's quota in the Fund determines, in particular, the amount of its subscription, its voting weight, its access to Fund financing, and its share in the allocation of SDRs.

[241]Article XXVI, section 2(a) provides that, "[i]f a member fails to fulfil any of its obligations under this Agreement, the Fund may declare the member ineligible to use the general resources of the Fund".

[242]Under the rights accumulation program (RAP), a member with overdue financial obligations to the Fund earns "rights" as it satisfactorily performs under an economic adjustment programme monitored by the Fund. The accumulated rights are then "encashed" in conjunction with a financial arrangement—such as the arrangement under the enhanced structural adjustment facility, a stand-by or an extended arrangement—approved by the Fund. The rights approach, however, is available only to members that were in protracted arrears to the Fund at the end of 1989.

[243]The five successor republics of the Socialist Federal Republic of Yugoslavia are: Federal Republic of Yugoslavia (Serbia and Montenegro), Bosnia and Herzegovina, Republic of Croatia, Republic of Slovenia and the former Yugoslav Republic of Macedonia.

[244]CCFF is a policy of the Fund on the use of its resources in the General Resources Account (adopted pursuant to article V, section 3 of the Articles). It is intended to provide financial assistance to member countries that are experiencing balance of payment diffi-

culties arising out of (a) temporary export shortfalls, (b) adverse external contingencies, or (c) excess cost of cereal imports. *Selected Decisions, Twenty-First Edition* (Washington, D.C., IMF, 1996), pp. 160-188.

[245]The Systemic Transformation Facility was a temporary facility established in April 1993 to provide financial assistance from the Fund's resources in the General Resource Account to members with economics in transition that faced balance of payment difficulties arising from severe disruptions to their trade and payment arrangements owing to a shift from reliance on trading at non-market prices to multilateral, market-based trade. *Selected Decisions*, *supra*, note 244, p.214.

[246]Executive Board Decision No. 8759-(87/176) ESAF, 18 December 1987, as amended, *Selected Decisions*, *supra*, note 214 pp. 22-23. The Enhanced Structural Adjustment Facility Trust, established in 1987, is a trust administered and operated by the Fund for the purpose of providing financial assistance on highly concessional terms to low-income countries facing protracted balance-of-payments problems and to support eligible members' medium-term macroeconomic adjustment and structural reform policies.

[247]The list is attached as an Annex to Executive Board Decision No.8240-(86/56) SAF, 26 March 1986, *Selected Decisions*, *supra*, note 244, pp.312-313.

[248]Executive Board Decision No.6230-(79/140), August 1979, *Selected Decisions*, *supra*, note 244, pp.103-105.

[249]Executive Board Decision No. 5392-(77/63) 29 April 1977, *Selected Decisions*, *supra*, note 244, pp.8-12.

[250]Establishment of a Framework Administered Account for Technical Assistance Activities, Executive Board Decision No. 10942-(95/33), 3 April 1995, *Selected Decisions*, *supra*, note 244, p. 60.

[251]In accordance with Valuation of the Special Drawing Right, Executive Board Decision No. (6631-80/145)G/S, 17 September 1980, *Selected Decisions*, *supra*, note 244, p.439.

[252]United Nations, *Treaty Section*, vol. 33, p. 261.

[253]Ibid., vol. 15, p.295.

[254]United Nations, *Treaty Series*, vol. 195, p.2; vol. 1209, p.32; vol. 1281, p.297. See also International Telecommunication Convention, concluded at Nairobi on 6 November 1982 (not yet published) and Constitution and Convention of the International Telecommunication Union concluded at Geneva on 22 December 1992 (not yet published).

[255]The reports of the two sessions of the Legal Committee held during 1995 are contained in documents LEG 72/9 and LEG 73/14 respectively.

[256]United Nations, *Treaty Series*, vol.1456, p.221.

[257]IMO document LEG/CONF.8/10.

[258]United Nations, *Treaty Series*, vol.1463, p.19.

[259]United Nations, *Treaty Series*, vol. 973, p. 3.

[260]Ibid., Vol. 1110, p. 57.

[261]Ibid., vol. 439, p. 193.

[262]Unpublished.

[263]Unpublished.

[264]United Nations, *Treaty Series*, vol. 1184, p. 2.

[265]*International Legal Materials*, vol. XII, p. 1319.

[266]Ibid, vol. XVII, p. 546.

[267]United Nations, *Treaty Series*, vol. 640, p.133.

[268]*International Legal Materials*, vol. XXX, p. 725.

[269]United Nations, *Treaty Series*, vol. 828. p.389.

[270]Ibid., vol.74, p. 343.

[271]Cm 1601, *British Treaty Series* 3 (1997).

[272]United Nations, *Treaty Series*, vol. 1160, p. 231.

[273]Ibid., vol. 828, p. 107.

[274]*International Law Materials*, vol. 36, p. 65.

[275]United Nations, *Treaty Series*, vol. 828, p. 221.

[276]*International Law Materials*, vol. 17, p. 285.

[277]United Nations, *Treaty Series*, vol. 496, p. 43.

[278]Ibid., vol. 866, p. 67.

[279]Ibid., vol. 1144, p. 3.

[280]Ibid., vol. 1160, p. 483.

[281]Not published.

[282]United Nations, *Treaty Series*, vol. 828, p. 191.
[283]Ibid., Vol. 828, p. 438.
[284]INFCIRC/9/Rev.2.
[285]INFCIRC/274/Rev.1.
[286]INFCIRC/335.
[287]INFCIRC/336.
[288]INFCIRC/500.
[289]INFCIRC/402.
[290]INFCIRC/377/Add.. 7.
[291]INFCIRC/167/Add. 15.
[292]United Nations, *Treaties Series*, vol. 729, p. 161.
[293]INFCIRC/495.
[294]INFCIRC/465.
[295]INFCIRC/476.
[296]INFCIRC/463.
[297]INFCIRC/504.
[298]INFCIRC/477.
[299]INFCIRC/483.
[300]INFCIRC/462.