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UNITED NATIONS JURIDICAL YEARBOOK

1998

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

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

Chapter III

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

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

1. DISARMAMENT AND RELATED MATTERS[1]

(*a*) Nuclear disarmament issues

During 1998, the Conference on Disarmament was unable to overcome the existing differences in perception among its members concerning the item on cessation of the nuclear arms race and nuclear disarmament, and only in August established an ad hoc committee on the question of a treaty banning the production of fissile material for nuclear weapons.

Also during the year, the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization[2] and its subsidiary bodies proceeded with their tasks of establishing an effective global verification regime and with other activities necessary for the implementation of the Treaty, and preparations for the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons of 1968[3] continued at the second session of the Preparatory Committee.

The International Atomic Energy Agency (IAEA) continued with efforts to strengthen and increase the effectiveness of its safeguards system. The number of States signatories to the Model Protocol Additional to Safeguards Agreements,[4] which provides IAEA with the legal authority to implement a more effective safeguards system to detect and verify possible non-peaceful nuclear activities in a State at an early stage, increased to 35.[5]

The United Nations Special Commission (UNSCOM) continued its activities related to verifying Iraq's declarations concerning full, final and complete disclosure of its proscribed chemical, biological and missile programmes, as requested by the Security Council in its resolutions 687 (1991) and 707 (1991), but encountered difficulty as a result of Iraq's refusal to cooperate. In August, Iraq suspended its cooperation with UNSCOM and IAEA. IAEA resumed its activities in Iraq for a short period of time, but withdrew its staff along with UNSCOM in mid-December, prior to military action by the United States of America and the United Kingdom of Great Britain and Northern Ireland.[6]

Regarding nuclear-weapon-free zones, in implementation of General Assembly resolution 52/38 S of 9 December 1997 on the establishment of a nuclear-weapon-free zone in Central Asia, and in response to a request made by the Central Asian States, it was decided to establish a group of experts to prepare the form and elements of an agreement on such a zone. The group of experts held three meetings and by the end of the year had agreed upon 80 per cent of the articles.

At the bilateral level, the United States and the Russian Federation continued to reduce their nuclear arsenals on the basis of existing treaties, but the ratification of the 1993 START II Treaty[7] by the Russian Federation was not finalized. All nuclear-weapon States reported that they had undertaken unilaterally a number of measures, such as reducing their stocks of nuclear weapons and putting under safeguards part of their fissile materials.

Consideration by the General Assembly

The General Assembly, on the recommendation of the First Committee, took action on 18 draft resolutions and two decisions dealing with nuclear disarmament, adopting them on 4 December 1998.

Among the resolutions adopted was resolution 53/77 Y, entitled "Towards a nuclear-weapon-free world: the need for a new agenda". Also adopted was resolution 53/78 D, entitled "Convention on the Prohibition of the Use of Nuclear Weapons", in which the Assembly reiterated its request to the Conference on Disarmament to commence negotiations in order to reach agreement on an international convention prohibiting the use or threat of use of nuclear weapons under any circumstances. The Assembly also adopted resolution 53/75, entitled "Conclusion of effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons", and resolution 53/80, concerning the risk of nuclear proliferation in the Middle East.

In the area of nuclear testing, the General Assembly adopted resolution 53/77 G, which was concerned with the recent nuclear tests conducted in South Asia.

There were several resolutions adopted regarding nuclear-weapon-free zones: resolution 53/74, entitled "Establishment of a nuclear-weapon-free zone in the region of the Middle East"; resolution 53/77 A, "Establishment of a nuclear-weapon-free zone in Central Asia"; resolution 53/77 D, "Mongolia's international security and nuclear-weapon-free status"; resolution 53/77 Q, "Nuclear-weapon-free southern hemisphere and adjacent areas"; resolution 53/77 H, "Regional disarmament", concerning the regions of Central and Eastern Europe; and resolution 53/83, entitled "Consolidation of the regime established by the 1967 Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco)".[8]

Furthermore, the General Assembly adopted resolution 53/77 C, entitled "Prohibition of the dumping of radioactive wastes".

(*b*) The Chemical and Biological Conventions

The Organisation for the Prohibition of Chemical Weapons continued with its activities under the 1992 Chemical Weapons Convention,[9] and the Conference of the States Parties to the Convention and the Executive Council adopted a number of decisions concerning the functioning of the Organisation. A great number of chemical weapons production facilities were inspected and some of those facilities were certified as completely destroyed.

Efforts to strengthen the 1971 Biological Weapons Convention[10] through the development of a legally binding protocol to the Convention continued throughout the year in the framework of the Ad Hoc Group of the Conference on Disarmament tasked with negotiating such an instrument. Negotiations continued on the basis of the rolling text; however, considerable differences of position remained as of its last session.

UNSCOM continued its inspection activities in connection with the proscribed chemical and biological weapons and missile production in Iraq with considerable difficulties and, by the end of the year, its activities completely ceased.

Consideration by the General Assembly

Resolutions concerning the Chemical Weapons Convention (resolution 53/77 R) and the Biological Weapons Convention (resolution 53/84) were adopted on 4 December 1998. Also adopted on the same date was resolution 53/77 L, entitled "Measures to uphold the authority of the 1925 Geneva Protocol".[11]

(*c*) Global, regional and other approaches to conventional weapons issues

At the global level, the subjects of small arms, including illicit trafficking, and transparency in armaments were addressed in the United Nations and other multilateral forums. The phenomenon of the excessive accumulation of small arms and their proliferation was considered by the Security Council, the General Assembly, the Economic and Social Council and the United Nations Secretariat, with the Department for Disarmament Affairs being designated the focal point for coordinating all related action in the United Nations system. There were two major developments: a decision of the General Assembly (see resolution 53/77 E) to convene an international conference on the illicit arms trade in all its aspects not later than 2001, and the Declaration of a Moratorium on the Importation, Exportation and Manufacture of Small Arms and Light Weapons in West Africa by the Economic Community of West African States (see resolution 53/77 B).

The United Nations Register of Conventional Arms and the standardized instrument of international reporting of military expenditures continued to contribute to building transparency in military matters. However, differences among Member States continued regarding further development of the Register, with some States (members of the European Union, countries associated with it and the United States) advocating the inclusion of additional information on procurement through national production and military holdings, and others, mostly non-aligned States, advocating the inclusion of weapons of mass destruction.

Consideration by the General Assembly

At its fifty-third session, on 4 December 1998, the General Assembly took action, on the recommendation of the First Committee, on 15 draft resolutions. On the issue of illicit arms trade, in addition to the two resolutions mentioned above, the Assembly adopted two further resolutions: resolutions 53/77 M and 53/77 T.

In the area of transparency, three resolutions also were adopted: resolutions 53/72, 53/77 S and 53/77 V. In the latter resolution, the General Assembly reaffirmed its determination to ensure the effective operation of the United Nations Register of Conventional Arms.

Regarding the issue of anti-personnel mines, the General Assembly adopted resolution 53/77 N on the same date. The resolution promoted the 1977 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction.[12] And in its resolution 53/81, entitled "Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscrim-

inate Effects",[13] the Assembly expressed satisfaction that the Protocol on Blinding Laser Weapons (Protocol IV)[14] had entered into force on 30 July 1998 and that the amended Protocol on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices (Protocol II)[15] had entered into force on 3 December 1998.

The General Assembly also adopted a number of resolutions concerned with regional conventional weapons disarmament, including: resolution 53/77 O, entitled "Regional disarmament"; resolution 53/77 P, entitled "Conventional arms control at the regional and subregional levels"; resolution 53/78 A, entitled "Regional confidence-building measures: activities of the United Nations Standing Advisory Committee on Security Questions in Central Africa"; resolution 53/78 B, entitled United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific"; resolution 53/78 C, entitled "United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific"; and resolution 53/78 F, entitled "United Nations regional centres for peace and disarmament".

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2. OTHER POLITICAL AND SECURITY QUESTIONS

(*a*) Membership in the United Nations

At the end of 1998, 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-seventh session at the United Nations Office at Vienna from 23 to 31 March 1998.[16]

Regarding the agenda item entitled "Question of review and possible revision of the principles relevant to the use of nuclear power sources in outer space", the Legal Subcommittee decided not to re-establish its Working Group on the matter, and further agreed that revision of the Principles was not warranted at the current stage. It also noted that the Scientific and Technical Subcommittee, in 1998, had recommended suspending consideration of the item for one year.[17]

In connection with the item entitled "Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union", the Legal Subcommittee re-established the Working Group to continue its consideration of the item. At the session, the Subcommittee had before it a note by the United Nations Secretariat entitled "Questionnaire on possible legal issues with regard to aerospace objects: replies from Member States",[18] as well as documents submitted during previous sessions.

Concerning the item entitled "Review of the status of the five international legal instruments governing outer space",[19] the Legal Subcommittee had before it a note by the United Nations Secretariat on the review of the status of the five international legal instruments governing outer space[20] and a working paper on the same subject.[21]

Regarding other matters before the Legal Subcommittee at its thirty-seventh session, the Subcommittee recalled that at its thirty-sixth session, in 1997, the fol-

lowing items had been discussed for possible inclusion in the agenda of the Subcommittee or had been recommended for inclusion:[22]

— Review of the status of the five international legal instruments governing outer space;

— Commercial aspects of space activities;

— Review of existing norms of international law applicable to space debris;

— Legal aspects of space debris;

— Comparative review of the principles of international space law and international environmental law.

The Subcommittee also recalled that the Committee on the Peaceful Uses of Outer Space at its fortieth session had discussed the possibility of including in the agenda an item proposed by Greece entitled "Review of the Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting[23] and the Principles Relating to Remote Sensing of the Earth from Outer Space".[24] The Subcommittee noted two additional proposals for new agenda items: "Improvement of the Convention on Registration of Objects Launched into Outer Space" and "Examination of the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982[25] as a model to encourage wider accession to the 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies".[26]

The Legal Subcommittee also recommended that the Chairman of the Subcommittee report to the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III), to be held at Vienna from 19 to 30 July 1999, on the work of the Subcommittee, including its past achievements, current work and new challenges in the development of space law.

The Committee on the Peaceful Uses of Outer Space, at its forty-first session, held at the United Nations Office at Vienna from 3 to 12 June 1998, took note of the report of the Legal Subcommittee on the work of its thirty-seventh session and made a number of recommendations and decisions regarding the work of the Subcommittee.[27]

Consideration by the General Assembly

On the recommendation of the Special Political and Decolonization Committee (Fourth Committee), the General Assembly, on 3 December 1998, adopted resolution 53/45, entitled "International cooperation in the peaceful uses of outer space", in which it took note of the report of the Secretary-General[28] on the implementation of the recommendations of the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space, and endorsed the recommendations of the Committee on the Peaceful Uses of Outer Space with regard to the Legal Subcommittee.

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

The General Assembly, in its resolution 53/58 of 3 December 1998, adopted on the recommendation of the Special Political and Decolonization Committee (Fourth Committee), welcomed the report of the Special Committee on Peacekeeping Operations,[29] and endorsed the proposals, recommendations and conclusions

of the Special Committee contained in paragraphs 44 to 115 of its report. The Assembly further reiterated that those Member States that would become personnel contributors to United Nations peacekeeping operations in years to come or that would participate in the future in the Special Committee for three consecutive years as observers shall, upon request in writing to the Chairman of the Special Committee, become members at the following session of the Special Committee.

The General Assembly, by its resolution 53/2 of 6 October 1998, without reference to a Main Committee, adopted the Declaration on the Occasion of the Fiftieth Anniversary of United Nations Peacekeeping, which reads as follows:

Declaration on the Occasion of the Fiftieth Anniversary of United Nations Peacekeeping

We, the States Members of the United Nations, have gathered at this commemorative meeting of the fifty-third session of the General Assembly to mark the fiftieth anniversary of United Nations peacekeeping. It has been fifty years since the establishment of the first United Nations observer mission, the United Nations Truce Supervision Organization. We pay tribute to the hundreds of thousands of men and women who have, in the past fifty years, served under the United Nations flag in more than forty peacekeeping operations around the world, and we honour the memory of more than 1,500 United Nations peacekeepers who have laid down their lives in the cause of peace.

We reiterate our support for all efforts effectively to promote the safety and security of United Nations peacekeeping personnel. We recall with pride the awarding of the 1988 Nobel Peace Prize to the peacekeeping forces of the United Nations, and we welcome the establishment by the Security Council of the Dag Hammarskjöld Medal as a tribute to the sacrifice of those who have lost their lives while serving in peacekeeping operations under the operational control and authority of the United Nations. We, the Member States of the United Nations, affirm our commitment and willingness to provide full support to United Nations peacekeepers to ensure that they are able successfully to fulfil the tasks entrusted to them.

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

(*a*) Environmental questions

Fifth special session of the Governing Council of the United Nations Environment Programme[30]

The Governing Council held its fifth special session at the headquarters of the United Nations Environment Programme, at Nairobi, from 20 to 22 May 1998. During the session, a number of decisions were adopted by the Council, including one on the 1998 Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.[31] In the decision, the Governing Council expressed its agreement to changes in the voluntary prior informed consent procedure, if so decided by the Conference of Plenipotentiaries, provided that costs additional to the implementation of the procedure were met through extrabudgetary resources. In another decision, the Council welcomed the results of the first meeting of the Assembly of the Global Environment Facility, held at New Delhi from 1 to 3 April 1998, and also welcomed the revitalized profile of the United Nations Environment Programme as an implementing agency of the Facility.

Consideration by the General Assembly

At the fifty-third session of the General Assembly, a number of resolutions and decisions were adopted, on the recommendation of the Second Committee, in the area of the environment, among them resolution 53/187 of 15 December 1998, in which the Assembly welcomed the report of the Governing Council on its fifth special session, and also welcomed the adoption by the Conference of Plenipotentiaries, at Rotterdam, the Netherlands, on 11 September 1998, of the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. By the same resolution, the Assembly further welcomed the holding of the first session of the Intergovernmental Negotiating Committee for an International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants, at Montreal, Canada, from 29 June to 3 July 1998. On the same date, the Assembly adopted resolution 53/188, entitled "Implementation of and follow-up to the outcome of the United Nations Conference on Environment and Development and the nineteenth special session of the General Assembly", in which it stressed the need to accelerate the full implementation of Agenda 21[32] and the Programme for the Further Implementation of Agenda 21.[33]

Furthermore, by its resolution 53/186, also of 15 December 1998, the General Assembly encouraged the Conferences of the Parties to, and the permanent secretariats of, the United Nations Framework Convention on Climate Change,[34] the Convention on Biological Diversity[35] and the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa,[36] to examine appropriate opportunities and measures to strengthen their complementarities and improve scientific assessments of ecological linkages between the three conventions. And by its decision 53/444 of the same date, the General Assembly took note of the report of the Secretary-General on products harmful to health and the environment.[37]

(*b*) Population and development

The General Assembly, by its resolution 53/183 of 15 December 1998, adopted on the recommendation of the Second Committee, took note of the report of the Secretary-General on the preparations for the special session of the General Assembly for an overall review and appraisal of the implementation of the Programme of Action of the International Conference on Population and Development.[38]

(*c*) Economic issues

During the fifty-third session, the General Assembly, on the recommendation of the Second Committee, adopted a number of resolutions in this area, among them resolution 53/172 of 15 December 1998, in which it took note of the report of the Secretary-General entitled "Global financial flows and their impact on developing countries: addressing the matter of volatility",[39] the *World Economic and Social Survey, 1998*[40] and the *Trade and Development Report, 1998*.[41] On the same date, the Assembly also adopted resolution 53/175, in which it took note of the report of the Secretary-General on the debt situation of the developing countries as of mid-1998.[42] By its resolution 53/177, also of 15 December 1998, the Assembly took note of the report of the Director-General of the United Nations Industrial Development Organization,[43] and reaffirmed that industrialization was a key element in the promotion of the sustainable development of developing countries, as well as in

the creation of productive employment, the eradication of poverty and facilitating social integration, including the integration of women into the development process. And in its resolution 53/179, of the same date, entitled "Integration of the economies in transition into the world economy", the Assembly took note of the report of the Secretary-General on the subject.[44]

(*d*) Crime prevention

Also at the fifty-third session, the General Assembly, on the recommendation of the Second Committee, adopted resolution 53/176 of 15 December 1998, in which it welcomed recent multilateral initiatives to combat corruption, including the 1996 Inter-American Convention against Corruption,[45] adopted by the Organization of American States, the 1997 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions,[46] adopted by the Organisation for Economic Cooperation and Development, the Dakar Declaration on the Prevention and Control of Organized Transnational Crime and Corruption,[47] the Manila Declaration on the Prevention and Control of Transnational Crime[48] and the 1997 Convention on the Fight against Corruption involving Officials of the European Communities or officials of Member States of the European Union.[49] By the same resolution, the Assembly took note of the report of the Secretary-General entitled "Promotion and maintenance of the rule of law: action against corruption and bribery".[50]

At the same session, on 9 December 1998, the General Assembly, on the recommendation of the Third Committee, adopted a number of resolutions on crime prevention. Among them was resolution 53/110, entitled "Preparations for the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders", in which the Assembly approved the provisional agenda of the Tenth Congress and endorsed its programme of work. By resolution 53/111, entitled "Transnational organized crime", the Assembly took note of the report of the Secretary-General entitled "Implementation of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime: question of the elaboration of an international convention against organized transnational crime, and other possible international instruments".[51] And by its resolution 53/112, the Assembly welcomed the report of the Intergovernmental Expert Group Meeting on Mutual Assistance in Criminal Matters, held at Arlington, Virginia, United States of America, from 23 to 26 February 1998.[52] In the same resolution, the Assembly decided that the 1990 Model Treaty on Mutual Assistance in Criminal Matters[53] should be complemented by the provisions set out below, and, at the same time, encouraged Member States, within the framework of national legal systems, to enact effective legislation on mutual assistance:

Complementary provisions for the Model Treaty on Mutual Assistance in Criminal Matters

Article 1

1. In paragraph 3 (*b*), replace the words "Optional Protocol to" with the words "article 18 of".

Article 3

2. In the title, replace the word "competent" with the word "central".

3. Insert the word "central" before the word "authority".

4. Add the following footnote to the end of the article:

"Countries may wish to consider providing for direct communications between central authorities and for the central authorities to play an active role in ensuring the speedy execution of requests, controlling quality and setting priorities. Countries may also wish to agree that the central authorities are not the exclusive channel for assistance between the Parties and that the direct exchange of information should be encouraged to the extent permitted by domestic law or arrangements."

Article 4

5. In the footnote to paragraph 1, replace the last sentence with the following:

"Countries may wish, where feasible, to render assistance, even if the act on which the request is based is not an offence in the requested State (absence of dual criminality). Countries may also consider restricting the requirement of dual criminality to certain types of assistance, such as search and seizure."

6. In paragraph 1 (*d*) delete the words "that is subject to investigation or prosecution in the requested State or".

7. Add the following footnote to the end of paragraph 4:

"States should consult, in accordance with article 20, before assistance is refused or postponed."

Article 5

8. Add the following footnote to the end of paragraph 2:

"Countries may wish to provide that the request may be made by modern means of communication, including, in particularly urgent cases, verbal requests that are confirmed in writing forthwith."

Article 6

9. Add the following footnote to the end of the article:

"The requested State should secure such orders, including judicial orders, as may be necessary for the execution of the request. Countries may also wish to agree, in accordance with national legislation, to represent or act on behalf or for the benefit of the requesting State in legal proceedings necessary to secure such orders."

Article 8

10. Add the following words to the end of the footnote to the article:

", or restrict use of evidence only where the requested State makes an express request to that effect."

11. Add the following words to the beginning of the article: "Unless otherwise agreed,".

Article 11

12. Add the following footnote to the end of paragraph 2:

"Wherever possible and consistent with the fundamental principles of domestic law, the Parties should permit testimony, statements or other forms of assistance to be given via video link or other modern means of communication and should ensure that perjury committed under such circumstances is a criminal offence."

Article 12

13. In the English version of paragraph 1, replace the word "required" with the words "called upon".

14. Add the following footnote to the end of the article:

"Some countries may wish to provide that a witness who is testifying in the requesting State may not refuse to testify on the basis of a privilege applicable in the requested State."

New article 18

15. Insert as new article 18, entitled "Proceeds of crime", paragraphs 1 to 6 of the Optional Protocol to the Model Treaty on Mutual Assistance in Criminal Matters concerning the proceeds of crime and delete the remaining text of the Protocol, including the footnotes.

16. Replace the word "Protocol" with the word "article" throughout the new article.

17. Add the following footnote to the end of the title of the new article:

"Assistance in forfeiting the proceeds of crime has emerged as an important instrument in international cooperation. Provisions similar to those outlined in the present article appear in many bilateral assistance treaties. Further details can be provided in bilateral arrangements. One matter that could be considered is the need for other provisions dealing with issues related to bank secrecy. Provision could be made for the equitable sharing of the proceeds of crime between the Contracting States or for consideration of the disposal of the proceeds on a case-by-case basis."

18. Add the following footnote to the end of paragraph 5:

"The Parties might consider widening the scope of the present article by the inclusion of references to victims' restitution and the recovery of fines imposed as a sentence in a criminal prosecution."

Articles 18-21

19. Renumber former article 18 as article 19 and renumber all subsequent articles accordingly.

By the same resolution, the Assembly requested the Secretary-General to elaborate in consultation with Member States, for submission to the Commission on Crime Prevention and Criminal Justice, model legislation on mutual assistance in criminal matters, in order to enhance effective cooperation between States, taking into account the elements recommended by the Intergovernmental Expert Group for inclusion in such model legislation, which are set out below:

Elements recommended for inclusion in model legislation on mutual assistance in criminal matters

A. *General recommendation*

1. Model legislation on mutual assistance in criminal matters should reflect in statutory terms the general provisions of the Model Treaty on Mutual Assistance in Criminal Matters, together with the recommendations contained in annex I above. To the extent possible, it should provide different options for States with different legal systems. Where relevant, it should take into account provisions of the model bill on mutual assistance in criminal matters developed in 1998 by the United Nations International Drug Control Programme.

B. *Scope*

2. The model legislation should provide a full range of flexible options for assuming mutual assistance obligations. When there is a treaty on mutual assistance in criminal matters, the terms of that treaty should govern the relationship. The legislation should also permit mutual assistance to be provided without a treaty, with or without reciprocity.

C. *Jurisdiction*

3. The model legislation could provide for jurisdiction, inter alia:

(*a*) To issue judicial orders necessary for executing mutual assistance requests;

(*b*) To authorize the requested State to act on behalf or for the benefit of, or to represent the interests of, the requesting State in legal proceedings necessary for executing mutual assistance requests;

(*c*) To punish perjury committed during mutual assistance, in particular perjury committed during videoconferencing.

D. *Procedure*

4. The model legislation should include options for procedures dealing with both incoming and outgoing requests for assistance in criminal matters. Such procedures should be in conformity, wherever applicable, with international and regional human rights instruments. Where no treaty provision is applicable, the legislation could also contain provisions on specific forms of mutual assistance, including testimony and other forms of cooperation carried out via video link, cooperation in asset seizure and forfeiture and the temporary transfer of witnesses in custody.

5. The model legislation could provide for the establishment of a central authority or authorities for the receipt and transmission of requests and the provision of advice and assistance to relevant authorities. The legislation could also specify the extent of the central authority's powers.

E. *Communications*

6. Where no treaty provision is applicable, the legislation should set forth the means of communicating between the requesting State and the requested State, allowing for the use of the most modern forms of communication.

Further resolutions adopted by the General Assembly on 9 December 1998 included resolution 53/113, entitled "United Nations African Institute for the Prevention of Crime and the Treatment of Offenders", in which the Assembly reiterated the need to strengthen further the capacity of the Institute to support national mechanisms for crime prevention and criminal justice in African countries. In its resolution 53/114, entitled "Strengthening the United Nations Crime Prevention and Criminal Justice Programme, in particular its technical cooperation capacity", the Assembly took note of the report of the Secretary-General on the progress made in the implementation of Assembly resolution 52/90 of 12 December 1997.[54] And in its resolution 53/116, the Assembly took note of the report of the Secretary-General on trafficking in women and girls;[55] welcomed national, regional and international efforts to implement the recommendations of the World Congress against Commercial and Sexual Exploitation of Children;[56] and urged Governments to continue their efforts to implement the provisions on trafficking in women and girls contained in the Platform for Action of the Fourth World Conference on Women[57] and the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights.[58]

(*e*) International cooperation against the world drug problem

Status of international instruments

During the course of 1998, three more States became parties to the 1961 Single Convention on Narcotic Drugs,[59] bringing the total number of parties to 142; five more States became parties to the 1971 Convention on Psychotropic Substances,[60] bringing the total to 158; one more State became a party to the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961,[61] bringing the total to 108; three more States became parties to the 1975 Single Convention on Narcotic Drugs, 1961,

as amended by the Protocol of 25 March 1972 amending the Single Convention on Narcotic Drugs, 1961,[62] bringing the total number of parties to 156; and seven more States became parties to the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,[63] bringing the total to 152.

Consideration by the General Assembly

On 9 December 1998, the General Assembly, on the recommendation of the Third Committee, adopted resolution 53/115, in which it reaffirmed that the fight against the world drug problem was a common and shared responsibility which must be addressed in a multilateral setting; and urged competent authorities, at the international, regional and national levels, to implement the outcome of the twentieth special session of the General Assembly, devoted to the world drug problem, within the agreed time frames, in particular the high-priority practical measures at the international, regional or national level, as indicated in the Political Declaration,[64] the Declaration on the Guiding Principles of Drug Demand Reduction[65] and the measures to enhance international cooperation to counter the world drug problem,[66] including the Action Plan against Illicit Manufacture, Trafficking and Abuse of Amphetamine-type Stimulants and their Precursors,[67] the measures to prevent the illicit manufacture, import, export, trafficking, distribution and diversion of precursors used in the illicit manufacture of narcotic drugs and psychotropic substances,[68] the measures to promote judicial cooperation,[69] the measures to counter money-laundering[70] and the Action Plan on International Cooperation on the Eradication of Illicit Drug Crops and on Alternative Development.[71] In the same resolution, the Assembly also emphasized the need to increase the efficiency of the United Nations System-wide Action Plan on Drug Abuse Control,[72] as a tool to promote the coordination and enhancement of drug abuse control activities within the United Nations system, and welcomed the efforts of the United Nations International Drug Control Programme to implement its mandate within the framework of the international drug control treaties, the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control,[73] the Global Programme of Action,[74] the outcome of the special session of the General Assembly devoted to countering the world drug problem together and relevant consensus documents.

(*f*) Human rights questions

(1) *Status and implementation of international instruments*

(i) *International Covenants on Human Rights*

In 1998, two more States became parties to the International Covenant on Economic, Social and Cultural Rights of 1966,[75] bringing the total number of States parties to 139, two more States became parties to the International Covenant on Civil and Political Rights of 1966,[76] bringing the total to 142; one more State became a party to the Optional Protocol to the International Covenant on Civil and Political Rights of 1966,[77] bringing the total to 94; and four 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,[78] bringing the total to 35.

(ii) *International Convention on the Elimination of All Forms of Racial Discrimination of 1966*[79]

In 1998, three more States became parties to the Convention, bringing the total number of States parties to 153. Two States became parties to the amendment to article 8 of the Convention,[80] bringing the total to 24.

The General Assembly, in its resolution 53/131 of 9 December 1998, adopted on the recommendation of the Third Committee, took note of the report of the Committee on the Elimination of Racial Discrimination on its fifty-second and fifty-third sessions,[81] and encouraged the Committee to continue to contribute fully to the implementation of the Third Decade to Combat Racism and Racial Discrimination and its revised Programme of Action,[82] including by continuing to collaborate with the Subcommission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights, as well as by cooperating, as appropriate, with the Special Rapporteur of the Commission on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

(iii) *International Convention on the Suppression and Punishment of the Crime of Apartheid of 1973*[83]

In 1998, the number of States parties to the Convention remained at 101.

(iv) *Convention on the Elimination of All Forms of Discrimination against Women of 1979*[84]

In 1998, two more States became parties to the Convention, bringing the total number of States parties to 163. Two States became parties to the amendment to article 20, paragraph 1, of the Convention,[85] bringing the total to 21.

The General Assembly, by its resolution 53/118 of 9 December 1998, adopted on the recommendation of the Third Committee, welcomed the report of the Secretary-General on the status of the Convention.[86] The Assembly also urged States to limit the extent of any reservations they lodged to the Convention, to formulate any such reservations as precisely and as narrowly as possible, to ensure that no reservations were incompatible with the object and purpose of the Convention or otherwise incompatible with international treaty law, to review their reservations regularly with a view to withdrawing them and to withdraw reservations that were contrary to the object and purpose of the Convention or that were otherwise incompatible with international treaty law. The Assembly furthermore invited States parties to the Convention to give due consideration to the statement regarding reservations to the Convention on the Elimination of All Forms of Discrimination against Women adopted by the Committee on the Elimination of Discrimination against Women[87] to mark the fiftieth anniversary of the Universal Declaration of Human Rights.[88] The Assembly also took note of the report of the Secretariat on reservations to the Convention.[89]

(v) *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 1984*[90]

In 1998, seven more States became parties to the Convention, bringing the total number of States parties to 111.

The General Assembly, in its resolution 53/139 of 9 December 1998, adopted on the recommendation of the Third Committee, welcomed the report of the Com-

mittee against Torture,[91] and took note of the efforts made by the inter-sessional open-ended working group of the Commission on Human Rights on the elaboration of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was intended to establish a preventive system of regular visits to places of detention.

(vi) *Convention on the Rights of the Child of 1989*[92]

In 1998, the number of States parties to the Convention remained at 191. Seventeen States became parties to the amendment to article 43(2) of the Convention,[93] bringing the total to 51.

The General Assembly, by its decision 53/431 of 9 December 1998, adopted on the recommendation of the Third Committee, took note of the report of the Secretary-General on the status of the United Nations Convention on the Rights of the Child.[94]

(vii) *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990*[95]

In 1998, the number of States parties to the Convention remained at nine.

The General Assembly, by its resolution 53/137 of 9 December 1998, adopted on the recommendation of the Third Committee, took note of the report of the Secretary-General on the status of the Convention.[96]

(2) *Other human rights issues*

During 1998, at the fifty-third session, the General Assembly, also on the recommendation of the Third Committee, adopted a number of other resolutions in the area of human rights on 9 December. These included resolution 53/134, entitled "Universal realization of the right of peoples to self-determination", in which the Assembly took note of the report of the Secretary-General;[97] resolution 53/138, entitled "Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights", in which the Assembly took note of the report of the Secretary-General on the subject;[98] and resolution 53/140, entitled "Elimination of all forms of religious intolerance", in which the Assembly urged States to ensure that their constitutional and legal systems provided effective guarantees of freedom of thought, conscience, religion and belief, including the provision of effective remedies in cases where the right to freedom of religion or belief had been violated. And by its resolution 53/144, the Assembly adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, which reads as follows:

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

The General Assembly,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Reaffirming also the importance of the Universal Declaration of Human Rights and the International Covenants on Human Rights as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the im-

portance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,

Stressing that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and reaffirming the particular importance of achieving international cooperation to fulfil this obligation according to the Charter,

Acknowledging the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources,

Recognizing the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,

Reiterating that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and should be promoted and implemented in a fair and equitable manner, without prejudice to the implementation of each of those rights and freedoms,

Stressing that the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State,

Recognizing the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels,

Declares:

Article 1

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Article 2

1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

Article 3

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

Article 4

Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating

from the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments and commitments applicable in this field.

Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(*a*) To meet or assemble peacefully;

(*b*) To form, join and participate in non-governmental organizations, associations or groups;

(*c*) To communicate with non-governmental or intergovernmental organizations.

Article 6

Everyone has the right, individually and in association with others:

(*a*) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

(*b*) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;

(*c*) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

Article 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

Article 8

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

2. This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

Article 9

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

3. To the same end, everyone has the right, individually and in association with others, inter alia:

(*a*) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

(*b*) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;

(*c*) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

Article 10

No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

Article 11

Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

Article 12

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Article 13

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

Article 14

1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

2. Such measures shall include, inter alia:

(*a*) The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;

(*b*) Full and equal access to international documents in the field of human rights, including the periodic reports by the State to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.

3. The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institution.

Article 15

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

Article 16

Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, inter alia, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.

Article 17

In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Article 18

1. Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.

2. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.

3. Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.

Article 19

Nothing in the present Declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in the present Declaration.

Article 20

Nothing in the present Declaration shall be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or non-governmental organizations contrary to the provisions of the Charter of the United Nations.

On the same date, the General Assembly adopted resolution 53/147, entitled "Extrajudicial, summary or arbitrary executions", in which it strongly condemned once again all the extrajudicial, summary or arbitrary executions that continued to take place throughout the world, reaffirmed Economic and Social Council decision 1998/265 of 30 July 1998, in which the Council had endorsed the decision of the Commission on Human Rights, in its resolution 1996/68, to extend the mandate of its Special Rapporteur on the subject for three years, and took note of the statement made by the Special Rapporteur before the General Assembly on 4 November 1998.[99] The General Assembly also adopted resolution 53/152, in which it endorsed the Universal Declaration on the Human Genome and Human Rights,[100] adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 11 November 1997, as well as resolution 53/155, in which it took note of the report of the Secretary-General on the right to development.[101]

(*g*) Refugee issues

(1) *Status of international instruments*

During 1998, one more State became party to the Convention Relating to the Status of Refugees of 1951,[102] bringing the total number of States parties to 132; one more State became a party to the Protocol Relating to the Status of Refugees of 1967,[103] bringing the total number of States parties to 132; one more State became a party to the Convention Relating to the Status of Stateless Persons of 1954,[104] bringing the total number of States parties to 45; and with regard to the Convention on the Reduction of Statelessness of 1961,[105] the number of States parties remained at 19.

(2) *Office of the United Nations High Commissioner for Refugees*[106]

The Executive Committee of the Programme of the United Nations High Commissioner for Refugees held its forty-ninth session at the United Nations Office at Geneva from 5 to 9 October 1998, during which it adopted a number of decisions and conclusions concerning international protection and follow-up to the Conference on the Commonwealth of Independent States.

(3) *Consideration by the General Assembly*

At its fifty-third session, the General Assembly, on 9 December 1998, on the recommendation of the Third Committee, adopted a number of resolutions in this area. In resolution 53/122, entitled "Assistance to unaccompanied refugee minors", the Assembly took note of the report of the Secretary-General;[107] in resolution 53/123, entitled "Follow-up to the Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighbouring States", the Assembly took note of the report of the Secretary-General;[108] in resolution 53/125, entitled "Office of the United Nations High Commissioner for Refugees", the Assembly, having considered the report of the High Commissioner,[109] endorsed the report and conclusions of the Executive Committee

of the High Commissioner's Programme;[110] and in resolution 53/126, entitled "Assistance to refugees, returnees and displaced persons in Africa", the Assembly took note of the report of the Secretary-General on the subject.[111]

(*h*) Ad hoc International Criminal Tribunals

The General Assembly, at its fifty-third session, adopted without reference to a Main Committee decision 53/416 of 19 November 1998, in which it took note of the fifth annual 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,[112] and decision 53/413 of 28 October 1998, in which it took note of the third annual report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994.[113]

(*i*) New international humanitarian order

During the fifty-third session, the General Assembly, on the recommendation of the Third Committee, adopted resolution 53/124 of 9 December, in which it took note of the report of the Secretary-General,[114] and expressed its appreciation to the Secretary-General for his continuing support for the efforts to promote a new international humanitarian order.

(*j*) Safety of United Nations personnel

The General Assembly, during its fifty-third session, without reference to a Main Committee, adopted resolution 53/87 of 7 December 1998, in which it took note of the report of the Secretary-General entitled "Respect for the privileges and immunities of officials of the United Nations and the specialized agencies and related organizations: safety and security of humanitarian personnel and protection of United Nations personnel",[115] and encouraged all States to become parties to and to respect fully the provisions of the relevant international instruments, including the Convention on the Safety of United Nations and Associated Personnel.[116]

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4. LAW OF THE SEA

(*a*) Status of the United Nations Convention on the Law of the Sea of 1982 (UNCLOS)[117]

In 1998, seven more States became parties to the Convention, bringing the total number of States parties to 130.

(*b*) Report of the Secretary-General

The report of the Secretary-General to the General Assembly at its fifty-third session under the agenda item entitled "Oceans and the law of the sea"[118] covers a number of areas of relevance on the topic. It was noted that on 13 November 1997,

the International Tribunal for the Law of the Sea had received its first application under article 292 of the Convention, which had been filed by Saint Vincent and the Grenadines against the Republic of Guinea. The dispute concerned the prompt release of the M/V "Saiga", an oil tanker flying the flag of Saint Vincent and the Grenadines, which was arrested and detained by customs officials of the Republic of Guinea on 28 October 1997. In the application, Saint Vincent and the Grenadines requested that the vessel, its master, its cargo and crew be promptly released in accordance with article 292 of the Convention. It alleged that Guinea had not complied with article 73, paragraph 2, of the Convention and that it had no jurisdiction to arrest the vessel. The Republic of Guinea, on the other hand, contended that the ship was involved in smuggling, which was an offence under the Customs Code of Guinea, and that the detention had taken place after the exercise by the Republic of Guinea of the right of hot pursuit in accordance with article 111 of the Convention. The Tribunal, after six days of oral proceedings and three weeks after the filing of the application by Saint Vincent and the Grenadines, delivered its judgment on 4 December 1997. It ordered the Republic of Guinea to promptly release the M/V "Saiga" and its crew from detention. On 13 January 1998, Saint Vincent and the Grenadines filed with the Tribunal a request under article 290, paragraph 5, of UNCLOS for the prescription of provisional measures, pending the constitution of an arbitral tribunal. On 20 February 1998, Saint Vincent and the Grenadines and the Republic of Guinea agreed by an exchange of letters to submit to the Tribunal both the merits and the request for the prescription of provisional measures with regard to the arrest and detention of the M/V "Saiga" by the authorities of Guinea on 28 October 1997. After the proceedings were under way, Guinea released the vessel on 4 March 1998 in compliance with the judgment of the Tribunal of 4 December 1997. The Tribunal therefore no longer had to deal with the release of the vessel. However, the Tribunal, on 11 March 1998, issued an order which included that Guinea refrain from carrying out its national court's decision or any other administrative measure against the M/V "Saiga", its master and crew as well as its owners or operators. The application on the merits of the case is currently pending before the Tribunal, awaiting the submission of a written Counter-Memorial from the Republic of Guinea.[119]

The report of the Secretary-General, in chapter II.F, describes the dispute settlement mechanisms provided for in Part XV of UNCLOS. Chapter V.A covers crimes at sea, including illicit traffic in narcotic drugs, illegal trafficking in migrants/smuggling of aliens by sea, terrorism and piracy and armed robbery at sea. In section B of the same chapter it is noted that the 1982 Convention required that States parties settle disputes which may arise between them concerning the interpretation or application of its provisions by peaceful means in accordance with Article 2, paragraph 3, of the Charter of the United Nations. The parties to a dispute which is likely to endanger the maintenance of international peace and security shall first seek a solution by negotiations, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of the parties' choice. When parties to a dispute have not reached a settlement by a peaceful means of their own choice, they shall, at the request of one party to the dispute, submit it to the court or tribunal having jurisdiction. States parties to the dispute could choose to submit their dispute to one of the four binding procedures: the International Tribunal for the Law of the Sea; the International Court of Justice; arbitrations; and special arbitration, which deals with specific types of disputes. Decisions rendered by a court or tribunal shall be final and shall be complied with by all parties.

(*c*) Consideration by the General Assembly

At its fifty-third session, the General Assembly, without reference to a Main Committee, adopted resolution 53/32 of 24 November 1998, in which it requested the Secretary-General to convene the Meeting of States Parties to the Convention in New York from 19 to 28 May 1999, during which elections would be held for seven judges of the International Tribunal for the Law of the Sea. Furthermore, in its resolution 53/33 of the same date, the Assembly took note of the report of the Secretary-General on the sub-item entitled "Large-scale pelagic drift-net fishing, unauthorized fishing in zones of national jurisdiction and on the high seas, fisheries by-catch and discards, and other developments".[120]

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5. INTERNATIONAL COURT OF JUSTICE[121, 122]

CASES BEFORE THE COURT[123]

(*a*) Contentious cases

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

On 17 March 1998, the President held a further meeting to ascertain the views of the Parties on the subsequent procedure. Qatar suggested the prescription by the Court of the filing of a Reply by each of the Parties at the end of March 1999, in which case it would be able to annex to its Reply a comprehensive report on the question of the authenticity of the documents; it moreover proposed to submit to the Court, by the end of September 1998, an interim report on that question to which Bahrain would be able to respond in its Reply. Bahrain did not object to the procedure envisaged by Qatar as either unreasonable or unjust.

By an Order of 30 March 1998 (*I.C.J. Reports 1998*, p. 243), the Court then fixed 30 September 1998 as the time limit for the filing of an interim report by Qatar on the authenticity of each of the challenged documents and directed the filing of a Reply by each of the Parties within the time limit of 30 March 1999.

The interim report of Qatar was filed within the prescribed time limit. In the conclusion, Qatar stated that it had decided that it would "disregard all the 82 challenged documents for the purposes of the present case so as to enable the Court to address the merits of the case without further procedural complications". It did so because:

> "on the one hand …, on the question of the material authenticity of the documents, there were differing views not only between the respective experts of the Parties, but also between its own experts, and, on the other hand …, as far as the historical aspects were concerned, the experts that it had consulted considered that Bahrain's assertions showed exaggerations and distortions."

The Agent of Bahrain, in a letter of 27 November 1998, referred to "the effective abandonment by Qatar of all of the impeached documents", concluding that Qatar could not make any further reference to the documents concerned, that it would not adduce the content of those documents in connection with any of its arguments and that, in general, the merits of the case would be adjudicated by the Court without

regard to those documents. In a letter of 1 February 1999, the Agent of Qatar confirmed that the position adopted by Qatar in its interim report was definitive.

After Qatar had, in December 1998, requested "a two-month extension of the time limit for the filing of a Reply by each of the Parties, to 30 May 1999", the Court, taking into account the concordant views of the Parties on treatment of the disputed documents and their agreement on the extension of time limits for the filing of Replies as expressed in an exchange of letters, made an Order on 17 February 1999 (*I.C.J. Reports 1999*, p. 3) placing on record Qatar's decision to disregard the 82 documents challenged by Bahrain, deciding that the Replies would not rely on those documents and extending the time limit for the submission of those Replies to 30 May 1999. Both Replies were filed within that time limit.

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

At public sittings held on 27 February 1998, the Court delivered the two judgments on the preliminary objections (*I.C.J. Reports 1998*, pp. 9 and 115 respectively), by which it rejected the objection to jurisdiction raised by the United Kingdom of Great Britain and Northern Ireland and the United States of America respectively on the basis of the alleged absence of a dispute between the Parties concerning the interpretation or application of the Montreal Convention of 23 September 1971; found that it had jurisdiction, on the basis of article 14, paragraph 1, of that Convention, to hear the disputes between Libya and the United Kingdom and Libya and the United States of America respectively as to the interpretation or application of the provisions of that Convention; rejected the objection to admissibility derived by the United Kingdom and the United States of America respectively from Security Council resolutions 748 (1992) and 883 (1993); found that the Applications filed by Libya on 3 March 1992 were admissible; and declared that the objection raised by each of the respondent States according to which Security Council resolutions 748 (1992) and 883 (1993) had rendered the claims of Libya without object did not, in the circumstances of the case, have an exclusively preliminary character.

Joint declarations were appended to the judgment in the case of *Libya* v. *United Kingdom* by Judges Bedjaoui, Guillaume and Ranjeva (*I.C.J. Reports 1998*, pp. 32-45); by Judges Bedjaoui, Ranjeva and Koroma (ibid., p. 46); and by Judges Guillaume and Fleischhauer (ibid., pp. 47-50); Judge Herczegh also appended a declaration (ibid., pp. 51-53); Judges Kooijmans and Rezek appended separate opinions (ibid., pp. 55-60 and 61-63); President Schwebel, Judge Oda and Judge ad hoc Sir Robert Jennings appended dissenting opinions (ibid., pp. 64-81, 82-98 and 99-113).

In the case of *Libya* v. *United States of America*, joint declarations were appended to the judgment by Judges Bedjaoui, Ranjeva and Koroma (ibid., p. 138); and by Judges Guillaume and Fleischhauer (ibid., pp. 139-142); Judge Herczegh also appended a declaration (ibid., p. 143); Judges Kooijmans and Rezek appended separate opinions (ibid., pp. 144-151 and 152-154); President Schwebel and Judge Oda appended dissenting opinions (ibid., pp. 155-172 and 173-188).

By Orders of 30 March 1998 (*I.C.J. Reports 1998*, pp. 237 and 240 respectively), the Court fixed 30 December 1998 as the time limit for the filing of the Counter-Memorials of the United Kingdom and the United States of America respectively. Upon a proposal of the United Kingdom and of the United States

respectively, referring to diplomatic initiatives undertaken shortly before, and after the views of Libya had been ascertained, the Senior Judge, Acting President, of the Court extended by Orders of 17 December 1998 (*I.C.J. Reports 1998*, pp. 746 and 749) that time limit by three months to 31 March 1999. The Counter-Memorials were filed within the time limit thus extended.

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

After Iran and the United States, in communications dated 18 November and 18 December 1997 respectively, had submitted their written observations, the Court, by an Order of 10 March 1998 (*I.C.J. Reports 1998*, p. 190), found that the counter-claim presented by the United States in its Counter-Memorial was admissible as such and formed part of the proceedings. It further directed Iran to submit a Reply and the United States to submit a Rejoinder, fixing the time limits for those pleadings at 10 September 1998 and 23 November 1999 respectively.

Judges Oda and Higgins appended separate opinions to the Order (*I.C.J. Reports 1998*, pp. 208-216 and 217-223); Judge ad hoc Rigaux appended a dissenting opinion (ibid., pp. 224-235).

By an Order of 26 May 1998 (*I.C.J. Reports 1998*, p. 269), the Vice-President of the Court, Acting President, extended, at the request of Iran and taking into account the views expressed by the United States, the time limits for Iran's Reply and the United States Rejoinder to 10 December 1998 and 23 May 2000 respectively. By an Order of 8 December 1998 (*I.C.J. Reports 1998*, p. 740), the Court further extended those time limits to 10 March 1999 for Iran's Reply and 23 November 2000 for the United States Rejoinder. Iran's Reply was filed within the time limit thus extended.

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

After Bosnia and Herzegovina and Yugoslavia, in communications dated 9 October and 23 October 1997 respectively, had submitted written observations, the Court, by an Order of 17 December 1997 (*I.C.J. Reports 1997*, p. 243), found that the counter-claims submitted by Yugoslavia in its Counter-Memorial were admissible as such and formed part of the proceedings. It further directed Bosnia and Herzegovina to submit a Reply and Yugoslavia to submit a Rejoinder, fixing the time limits for those pleadings at 23 January and 23 July 1998 respectively.

Judge ad hoc Kreća appended a declaration to the Order (ibid., pp. 262-271); Judge Koroma and Judge ad hoc Lauterpacht appended separate opinions (ibid., pp. 272-277 and 278-286); and Vice-President Weeramantry appended a dissenting opinion (ibid., pp. 287-297).

By an Order of 22 January 1998 (*I.C.J. Reports 1998*, p. 3), the President of the Court, at the request of Bosnia and Herzegovina and taking into account the views expressed by Yugoslavia, extended the time limits for the Reply of Bosnia and Herzegovina and the Rejoinder of Yugoslavia to 23 April 1998 and 22 January 1999 respectively. The Reply of Bosnia and Herzegovina was filed within the prescribed time limit.

Following a request from Yugoslavia and after the views of Bosnia and Herzegovina had been ascertained, the Court, by an Order of 11 December 1998 (*I.C.J. Reports 1998*, p. 743), extended the time limit for the filing of Yugoslavia's Rejoinder to 22 February 1999. That Rejoinder was filed within the time limit thus extended.

(vi) *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*

At a meeting that the President of the Court held with the representatives of the Parties on 7 October 1998, it was decided that Hungary was to file by 7 December 1998 a written statement of its position on the request for an additional judgment made by Slovakia. Hungary filed its written statement within the time limit fixed. The Parties subsequently informed the Court of the resumption of negotiations between them.

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

Public sittings to hear the oral arguments of the Parties on the preliminary objections raised by Nigeria were held from 2 to 11 March 1998.

At a public sitting held on 11 June 1998, the Court delivered its judgment on the preliminary objections (*I.C.J. Reports 1998*, p. 275), by which it rejected seven of Nigeria's eight preliminary objections; declared that the eighth preliminary objection did not have, in the circumstances of the case, an exclusively preliminary character; and found that, on the basis of Article 36, paragraph 2, of the Statute of the Court, it had jurisdiction to adjudicate upon the dispute and that the Application filed by Cameroon on 29 March 1994, as amended by the Additional Application of 6 June 1994, was admissible.

Judges Oda, Vereshchetin, Higgins, Parra-Aranguren and Kooijmans appended separate opinions to the judgment of the Court (*I.C.J. Reports 1998*, pp. 328-341, 342-344, 345-349, 350-353 and 354-361); Vice-President Weeramantry, Judge Koroma and Judge ad hoc Ajibola appended dissenting opinions (ibid., pp. 362-376, 377-391 and 392-418).

By an Order of 30 June 1998 (*I.C.J. Reports 1998*, p. 420), the Court, having been informed of the views of the Parties, fixed 31 March 1999 as the time limit for the filing of the Counter-Memorial of Nigeria.

On 28 October, Nigeria filed a request for an interpretation of the Court's judgment on preliminary objections of 11 June 1998. (Since a request for interpretation of a judgment of the Court forms a separate case, see case No. (xi) below.)

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

Public sittings to hear the oral arguments of the Parties on the question of the jurisdiction of the Court were held between 9 and 17 June 1998.

At a public sitting held on 4 December 1998, the Court delivered its judgment on jurisdiction (*I.C.J. Reports 1998*, p. 432), a summary of which is given below, followed by the text of the operative paragraph:

Review of the proceedings and submissions of the Parties (paras. 1-12)

The Court begins by recalling the history of the case and by quoting the requests made by Spain in its Application.

It continues by noting that in the oral proceedings, the following submissions were presented by the Parties:

On behalf of the Spanish Government, at the sitting of 15 June 1998:

"At the end of our oral arguments, we again note that Canada has abandoned its allegation that the dispute between itself and Spain has become moot. At least, it appears to have understood that it cannot be asserted that the Spanish Application, having no further purpose for the future, merely amounted to a request for a declaratory judgment. Nor does it say—a fact of which we take note—that the agreement between the European Union and Canada has extinguished the present dispute.

"Spain's final submissions are therefore as follows:

"We noted at the outset that the subject matter of the dispute is Canada's lack of title to act on the high seas against vessels flying the Spanish flag, the fact that Canadian fisheries legislation cannot be invoked against Spain, and reparation for the wrongful acts perpetrated against Spanish vessels. These matters are not included in Canada's reservation to the jurisdiction of the Court.

"We also noted that Canada cannot claim to subordinate the application of its reservation to the sole criterion of its national legislation and its own appraisal without disregarding your competence, under Article 36, paragraph 6, of the Statute, to determine your own jurisdiction.

"Lastly, we noted that the use of force in arresting the *Estai* and in harassing other Spanish vessels on the high seas, as well as the use of force contemplated in Canadian Bills C-29 and C-8, can also not be included in the Canadian reservation, because it contravenes the provisions of the Charter.

"For all the above reasons, we ask the Court to adjudge and declare that it has jurisdiction in this case."

On behalf of the Canadian Government, at the sitting of 17 June 1998:

"*May it please the Court* to adjudge and declare that the Court has no jurisdiction to adjudicate upon the Application filed by Spain on 28 March 1995."

Background to the case (paras. 13-22)

The Court begins with an account of the background to the case.

On 10 May 1994, Canada deposited with the Secretary-General of the United Nations a new declaration of acceptance of the compulsory jurisdiction of the Court. Canada's prior declaration of 10 September 1985 had already contained the three reservations set forth in subparagraphs (*a*), (*b*) and (*c*) of paragraph 2 of the new declaration. Subparagraph (*d*) of the 1994 declaration, however, set out a new, fourth reservation, further excluding from the jurisdiction of the Court

"(*d*) Disputes arising out of or concerning conservation and management measures taken by Canada with respect to vessels fishing in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area, as defined in the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, 1978, and the enforcement of such measures".

On the same day that the Canadian Government deposited its new declaration, it submitted to Parliament Bill C-29 amending the Coastal Fisheries Protection Act by extending its area of application to include the Regulatory Area of NAFO. Bill C-29 was adopted by Parliament, and received the Royal Assent on 12 May 1994. The Coastal Fisheries Protection Regulations were also amended, on 25 May 1994, and again on 3 March 1995, when Spanish and Portuguese fishing vessels were taken up

in table IV of section 21 (the category of fishing vessels which were prohibited from fishing for Greenland halibut in the area concerned).

On 12 May 1994, following the adoption of Bill C-8, Canada also amended section 25 of its Criminal Code relating to the use of force by police officers and other peace officers enforcing the law. This section applied as well to fisheries protection officers.

On 9 March 1995, the *Estai*, a fishing vessel flying the Spanish flag and manned by a Spanish crew, was intercepted and boarded some 245 miles from the Canadian coast, in Division 3L of the NAFO Regulatory Area (Grand Banks area), by Canadian Government vessels. The vessel was seized and its master arrested on charges of violations of the Coastal Fisheries Protection Act and its implementing regulations. They were brought to the Canadian port of St. John's, Newfoundland, where they were charged with offences under the above legislation, and in particular illegal fishing of Greenland halibut; part of the ship's catch was confiscated. The members of the crew were released immediately. The master was released on 12 March 1995, following the payment of bail, and the vessel on 15 March 1995, following the posting of a bond.

The same day that the *Estai* was boarded, the Spanish Embassy in Canada sent two notes verbales to the Canadian Department of Foreign Affairs and International Trade. The second of these stated, inter alia, that:

> "the Spanish Government categorically condemn[ed] the pursuit and harassment of a Spanish vessel by vessels of the Canadian navy, in flagrant violation of the international law in force, since these acts [took] place outside the 200-mile zone".

In its turn, on 10 March 1995, the Canadian Department of Foreign Affairs and International Trade sent a note verbale to the Spanish Embassy in Canada, in which it was stated that "[t]he *Estai* resisted the efforts to board her made by Canadian inspectors in accordance with international practice" and that "the arrest of the *Estai* was necessary in order to put a stop to the overfishing of Greenland halibut by Spanish fishermen".

Also on 10 March 1995, the European Community and its member States sent a note verbale to the Canadian Department of Foreign Affairs and International Trade which protested against the Canadian action.

On 16 April 1995, an "Agreement constituted in the form of an Agreed Minute, an Exchange of Letters, an Exchange of Notes and the Annexes thereto between the European Community and Canada on fisheries in the context of the NAFO Convention" was initialled; the Agreement was signed in Brussels on 20 April 1995. It concerned "the establishment of a Protocol to strengthen the NAFO Conservation and Enforcement Measures"; the immediate implementation on a provisional basis, of certain control and enforcement measures; the total allowable catch for 1995 for Greenland halibut within the area concerned; and certain management arrangements for stocks of the fish.

The Agreed Minutes further provided as follows:

> "The European Community and Canada maintain their respective positions on the conformity of the amendment of 25 May 1994 to Canada's Coastal Fisheries Protection Act, and subsequent regulations, with customary international law and the NAFO Convention. Nothing in this Agreed Minute shall prejudice any multilateral convention to which the European Community and

Canada, or any member State of the European Community and Canada, are parties, or their ability to preserve and defend their rights in conformity with international law, and the views of either Party with respect to any question relating to the law of the sea."

The European Community emphasized that the stay of prosecution against the vessel *Estai* and its master was essential for the application of the Agreed Minute.

On 18 April 1995 the proceedings against the *Estai* and its master were discontinued by order of the Attorney-General of Canada; on 19 April 1995 the bond was discharged and the bail was repaid with interest; and subsequently the confiscated portion of the catch was returned. On 1 May 1995 the Coastal Fisheries Protection Regulations were amended so as to remove Spain and Portugal from table IV to section 21. Finally, the Proposal for Improving Fisheries Control and Enforcement, contained in the Agreement of 20 April 1995, was adopted by NAFO at its annual meeting held in September 1995 and became measures binding on all Contracting Parties with effect from 29 November 1995.

The subject of the dispute (paras. 23-35)

Neither of the Parties denies that there exists a dispute between them. Each Party, however, characterizes the dispute differently. Spain has characterized the dispute as one relating to Canada's lack of entitlement to exercise jurisdiction on the high seas, and the non-opposability of its amended Coastal Fisheries Protection legislation and regulations to third States, including Spain. Spain further maintains that Canada, by its conduct, has violated Spain's rights under international law and that such violation entitles it to reparation. Canada states that the dispute concerns the adoption of measures for the conservation and management of fisheries stocks with respect to vessels fishing in the NAFO Regulatory Area and their enforcement.

Spain insists that it is free, as the Applicant in this case, to characterize the dispute that it wishes the Court to resolve.

The Court begins by observing that there is no doubt that it is for the Applicant, in its Application, to present to the Court the dispute with which it wishes to seise the Court and to set out the claims which it is submitting to it. Paragraph 1 of Article 40 of the Statute of the Court requires moreover that the "subject of the dispute" be indicated in the Application; and, for its part, paragraph 2 of Article 38 of the Rules of Court requires "the precise nature of the claim" to be specified in the Application. In a number of instances in the past, the Court has had occasion to refer to these provisions. It has characterized them as "essential from the point of view of legal security and the good administration of justice".

In order to identify its task in any proceedings instituted by one State against another, the Court must begin by examining the Application. However, it may happen that uncertainties or disagreements arise with regard to the real subject of the dispute with which the Court has been seised, or to the exact nature of the claims submitted to it. In such cases the Court cannot be restricted to a consideration of the terms of the Application alone nor, more generally, can it regard itself as bound by the claims of the Applicant.

It is for the Court itself, while giving particular attention to the formulation of the dispute chosen by the Applicant, to determine on an objective basis the dispute dividing the parties, by examining the position of both Parties. It will base itself not only on the Application and final submissions, but on diplomatic exchanges, public statements and other pertinent evidence.

In order to decide on the preliminary issue of jurisdiction which arises in the present case, the Court will ascertain the dispute between Spain and Canada, taking account of Spain's Application, as well as the various written and oral pleadings placed before the Court by the Parties.

The filing of the Application was occasioned by specific acts of Canada which Spain contends violated its rights under international law. These acts were carried out on the basis of certain enactments and regulations adopted by Canada, which Spain regards as contrary to international law and not opposable to it. It is in that context that the legislative enactments and regulations of Canada should be considered. The specific acts which gave rise to the present dispute are the Canadian activities on the high seas in relation to the pursuit of the *Estai*, the means used to accomplish its arrest and the fact of its arrest, and the detention of the vessel and arrest of its master, arising from Canada's amended Coastal Fisheries Protection Act and implementing regulations. The essence of the dispute between the Parties is whether these acts violated Spain's rights under international law and require reparation. The Court must now decide whether the Parties have conferred upon it jurisdiction in respect of that dispute.

The jurisdiction of the Court (paras. 36-84)

As Spain sees it, Canada has in principle accepted the jurisdiction of the Court through its declaration under Article 36, paragraph 2, of the Statute, and it is for Canada to show that the reservation contained in paragraph 2 (*d*) thereto does exempt the dispute between the Parties from this jurisdiction. Canada, for its part, asserts that Spain must bear the burden of showing why the clear words of paragraph 2 (*d*) do not withhold this matter from the jurisdiction of the Court.

The Court points out that the establishment or otherwise of jurisdiction is not a matter for the parties but for the Court itself. Although a party seeking to assert a fact must bear the burden of proving it, this has no relevance for the establishment of the Court's jurisdiction, which is a "question of law to be resolved in the light of the relevant facts". That being so, there is no burden of proof to be discharged in the matter of jurisdiction.

Declarations of acceptance of the Court's compulsory jurisdiction and their interpretation (paras. 39-56)

As the basis of jurisdiction, Spain founded its claim solely on the declarations made by the Parties pursuant to Article 36, paragraph 2, of the Statute. On 21 April 1995, Canada informed the Court, by letter, that in its view the Court lacked jurisdiction to entertain the Application because the dispute was within the plain terms of the reservation in paragraph 2 (*d*) of the Canadian declaration of 10 May 1994. This position was elaborated in its Counter-Memorial of February 1996, and confirmed at the hearings. From the arguments brought forward by Spain the Court concludes that Spain contends that the interpretation of paragraph 2 (*d*) of its declaration sought for by Canada would not only be an anti-statutory interpretation, but also an anti-Charter interpretation and an anti-general international law interpretation, and thus should not be accepted. The issue for the Court is consequently to determine whether the meaning to be accorded to the Canadian reservation allows the Court to declare that it has jurisdiction to adjudicate upon the dispute brought before it by Spain's Application.

Different views were proffered by the Parties as to the rules of international law applicable to the interpretation of reservations to optional declarations made under

Article 36, paragraph 2, of the Statute. In Spain's view, such reservations were not to be interpreted so as to allow reserving States to undermine the system of compulsory jurisdiction. Moreover, the principle of effectiveness meant that a reservation must be interpreted by reference to the object and purpose of the declaration, which was the acceptance of the compulsory jurisdiction of the Court. Spain did not accept that it was making the argument that reservations to the compulsory jurisdiction of the Court should be interpreted restrictively; it explained its position in this respect in the following terms:

> "It is said that Spain argues for the *most restrictive scope permitted* of reservations, namely a restrictive interpretation of them … This is not true. Spain supports the most limited scope permitted in the context of observing of the general rule of interpretation laid down in Article 31 of the Vienna Convention on the Law of Treaties."

Spain further contended that the *contra proferentem* rule, under which, when a text is ambiguous, it must be construed against the party that drafted it, applied in particular to unilateral instruments such as declarations of acceptance of the compulsory jurisdiction of the Court and the reservations which they contained. Finally, Spain emphasized that a reservation to the acceptance of the Court's jurisdiction must be interpreted so as to be in conformity with, rather than contrary to, the Statute of the Court, the Charter of the United Nations and general international law. For its part, Canada emphasized the unilateral nature of such declarations and reservations and contended that the latter were to be interpreted in a natural way, in context and with particular regard for the intention of the reserving State.

The Court recalls that the interpretation of declarations made under Article 36, paragraph 2, of the Statute, and of any reservations they contain, is directed to establishing whether mutual consent has been given to the jurisdiction of the Court. It is for each State, in formulating its declaration, to decide upon the limits it places upon its acceptance of the jurisdiction of the Court: "This jurisdiction only exists within the limits within which it has been accepted." Conditions or reservations thus do not by their terms derogate from a wider acceptance already given. Rather, they operate to define the parameters of the State's acceptance of the compulsory jurisdiction of the Court. There is thus no reason to interpret them restrictively. This is true even when, as in the present case, the relevant expression of a State's consent to the Court's jurisdiction, and the limits to that consent, represent a modification of an earlier expression of consent, given within wider limits; it is the declaration in existence that alone constitutes the unity to be interpreted, with the same rules of interpretation applicable to all its provisions, including those containing reservations.

The regime relating to the interpretation of declarations made under Article 36 of the Statute which are unilateral acts of State sovereignty is not identical with that established for the interpretation of treaties by the Vienna Convention on the Law of Treaties. In the event, the Court has in earlier cases elaborated the appropriate rules for the interpretation of declarations and reservations.

In accordance with those rules the Court will interpret the relevant words of a declaration including a reservation contained therein in a natural and reasonable way, having due regard to the intention of the State concerned at the time when it accepted the compulsory jurisdiction of the Court. The intention of a reserving State may be deduced not only from the text of the relevant clause, but also from the context in which the clause is to be read, and an examination of evidence regarding the circumstances of its preparation and the purposes intended to be served. In the

present case the Court has such explanations in the form of Canadian ministerial statements, parliamentary debates, legislative proposals and press communiqués.

It follows from the foregoing analysis that the *contra proferentem* rule has no role to play in this case in interpreting the reservation contained in the unilateral declaration made by Canada under Article 36, paragraph 2, of the Statute.

The Court was also addressed by both Parties on the principle of effectiveness. Certainly, this principle has an important role in the law of treaties and in the jurisprudence of this Court; however, what is required in the first place for a reservation to a declaration made under Article 36, paragraph 2, of the Statute, is that it should be interpreted in a manner compatible with the effect sought by the reserving State.

Spain has contended that, in case of doubt, reservations contained in declarations are to be interpreted consistently with legality and that any interpretation which is inconsistent with the Statute of the Court, the Charter of the United Nations or with general international law is inadmissible. Spain argues that, to comply with these precepts, it is necessary to interpret the phrase "disputes arising out of or concerning conservation and management measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area . . . and the enforcement of such measures" to refer only to measures which, since they relate to areas of the high seas, must come within the framework of an existing international agreement or be directed at stateless vessels. It further argues that an enforcement of such measures which involves a recourse to force on the high seas against vessels flying flags of other States could not be consistent with international law and that this factor too requires an interpretation of the reservation different from that given to it by Canada.

The Court observes that Spain's position is not in conformity with the principle of interpretation whereby a reservation to a declaration of acceptance of the compulsory jurisdiction of the Court is to be interpreted in a natural and reasonable way, with appropriate regard for the intentions of the reserving State and the purpose of the reservation. In point of fact, reservations from the Court's jurisdiction may be made by States for a variety of reasons; sometimes precisely because they feel vulnerable about the legality of their position or policy. Nowhere in the Court's case law has it been suggested that interpretation in accordance with the legality under international law of the matters exempted from the jurisdiction of the Court is a rule that governs the interpretation of such reservations. There is a fundamental distinction between the acceptance by a State of the Court's jurisdiction and the compatibility of particular acts with international law. The former requires consent. The latter question can only be reached when the Court deals with the merits, after having established its jurisdiction and having heard full legal argument by both parties. Whether or not States accept the jurisdiction of the Court, they remain in all cases responsible for acts attributable to them that violate the rights of other States. Any resultant disputes are required to be resolved by peaceful means, the choice of which, pursuant to Article 33 of the Charter, is left to the parties.

*Subparagraph (*d*) of paragraph 2 of Canada's declaration of 10 May 1994*
(paras. 57-84)

In order to determine whether the Parties have accorded to the Court jurisdiction over the dispute brought before it, the Court must now interpret subparagraph (*d*) of paragraph 2 of Canada's declaration, having regard to the rules of interpretation which it has just set out.

Before commencing its examination of the text of the reservation itself, the Court observes that the new declaration differs from its predecessor in one respect only: the addition, to paragraph 2, of a subparagraph (*d*) containing the reservation in question. It follows that this reservation is not only an integral part of the current declaration but also an essential component of it, and hence of the acceptance by Canada of the Court's compulsory jurisdiction.

The Court further notes, in view of the facts as summarized above, the close links between Canada's new declaration and its new coastal fisheries protection legislation, as well as the fact that it is evident from the parliamentary debates and the various statements of the Canadian authorities that the purpose of the new declaration was to prevent the Court from exercising its jurisdiction over matters which might arise with regard to the international legality of the amended legislation and its implementation.

The Court recalls that subparagraph 2 (*d*) of the Canadian declaration excludes the Court's jurisdiction in the following terms:

> "disputes arising out of or concerning conservation and management measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area, as defined in the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, 1978, and the enforcement of such measures".

Canada contends that the dispute submitted to the Court is precisely of the kind envisaged by the cited text; it falls entirely within the terms of the subparagraph and the Court accordingly has no jurisdiction to entertain it. For Spain, on the other hand, whatever Canada's intentions, they were not achieved by the words of the reservation, which does not cover the dispute; thus the Court has jurisdiction. In support of this view Spain relies on four main arguments: first, the dispute which it has brought before the Court falls outside the terms of the Canadian reservation by reason of its subject matter; secondly, the amended Coastal Fisheries Protection Act and its implementing regulations cannot, in international law, constitute "conservation and management measures"; thirdly, the reservation covers only "vessels" which are stateless or flying a flag of convenience; and fourthly, the pursuit, boarding and seizure of the *Estai* cannot be regarded in international law as "the enforcement of" conservation and management "measures". The Court examines each of these arguments in turn.

Meaning of the term "disputes arising out of or concerning" (paras. 62-63)

The Court begins by pointing out that, in excluding from its jurisdiction "*disputes arising out of or concerning*" the conservation and management measures in question and their enforcement, the reservation does not reduce the criterion for exclusion to the "subject matter" of the dispute. The words of the reservation—"*disputes arising out of or concerning*"—exclude not only disputes whose immediate "subject matter" is the measures in question and their enforcement, but also those "*concerning*" such measures and, more generally, those having their "origin" in those measures ("*arising out of*")—that is to say, those disputes which, in the absence of such measures, would not have come into being.

The Court has already found, in the present case, that a dispute does exist between the Parties, and it has identified that dispute. It must now determine whether that dispute has as its subject matter the measures mentioned in the reservation or their enforcement, or both, or concerns those measures, or arises out of them. In order to do this, the fundamental question which the Court must now decide is the

meaning to be given to the expression "*conservation and management measures …*" and "*enforcement of such measures*" in the context of the reservation.

Meaning of "conservation and management measures" (paras. 64-73)

Spain recognizes that the term "*measure*" is "an abstract word signifying an act or provision, a démarche or the course of an action, conceived with a precise aim in view" and that in consequence, in its most general sense, the expression "*conservation and management measure*" must be understood as referring to an act, step or proceeding designed for the purpose of the "conservation and management of fish". However, in Spain's view this expression, in the particular context of the Canadian reservation, must be interpreted more restrictively. Spain's main argument, on which it relied throughout the proceedings, is that the term "conservation and management measures" must be interpreted here in accordance with international law and that in consequence it must, in particular, exclude any unilateral "measure" by a State which adversely affected the rights of other States outside that State's own area of jurisdiction. Hence, in international law only two types of measures taken by a coastal State could, in practice, be regarded as "conservation and management measures": those relating to the State's exclusive economic zone; and those relating to areas outside that zone, insofar as these came within the framework of an international agreement or were directed at stateless vessels. Measures not satisfying these conditions were not conservation and management measures but unlawful acts pure and simple.

Canada, by contrast, stresses the very wide meaning of the word "measure". It takes the view that this is a "generic term", which is used in international conventions to encompass statutes, regulations and administrative action. Canada further argues that the expression "conservation and management measures" is "descriptive" and not "normative"; it covers "the whole range of measures taken by States with respect to the living resources of the sea".

The Court points out that it need not linger over the question whether a "measure" may be of a "legislative" nature. As the Parties have themselves agreed, in its ordinary sense the word is wide enough to cover any act, step or proceeding, and imposes no particular limit on their material content or on the aim pursued thereby. Numerous international conventions include "laws" among the "measures" to which they refer. The Court further points out that, in the Canadian legislative system as in that of many other countries, a statute and its implementing regulations cannot be dissociated. The statute establishes the general legal framework and the regulations permit the application of the statute to meet the variable and changing circumstances through a period of time. The regulations implementing the statute can have no legal existence independently of that statute, while conversely the statute may require implementing regulations to give it effect.

The Court shares with Spain the view that an international instrument must be interpreted by reference to international law. However, in arguing that the expression "conservation and management measures" as used in the Canadian reservation can apply only to measures "in conformity with international law", Spain would appear to mix two issues. It is one thing to seek to determine whether a concept is known to a system of law, in this case international law, whether it falls within the categories proper to that system and whether, within that system, a particular meaning attaches to it: the question of the existence and content of the concept within the system is a matter of definition. It is quite another matter to seek to determine whether a specific act falling within the scope of a concept known to a system of law

violates the normative rules of that system: the question of the conformity of the act with the system is a question of legality.

According to international law, in order for a measure to be characterized as a "conservation and management measure", it is sufficient that its purpose is to conserve and manage living resources and that, to this end, it satisfies various technical requirements. It is in this sense that the terms "conservation and management measures" have long been understood by States in the treaties which they conclude. The same usage is to be found in the practice of States. Typically, in their enactments and administrative acts, States describe such measures by reference to factual and scientific criteria.

Reading the words of the reservation in a "natural and reasonable" manner, there is nothing which permits the Court to conclude that Canada intended to use the expression "conservation and management measures" in a sense different from that generally accepted in international law and practice. Moreover, any other interpretation of that expression would deprive the reservation of its intended effect.

After an examination of the amendments made by Canada on 12 May 1994 to the Coastal Fisheries Protection Act and on 25 May 1994 and 3 March 1995 to the Coastal Fisheries Protection Regulations, the Court concludes that the "measures" taken by Canada in amending its coastal fisheries protection legislation and regulations constitute "conservation and management measures" in the sense in which that expression is commonly understood in international law and practice and has been used in the Canadian reservation.

Meaning to be attributed to the word "vessels" (paras. 74-77)

The Court goes on to observe that the conservation and management measures to which this reservation refers are measures "*taken by Canada with respect to vessels fishing in the NAFO Regulatory Area, as defined in the Convention on Future Multilateral Co-operation in the Northwest Atlantic Fisheries, 1978*". As the NAFO "Regulatory Area" as defined in the Convention is indisputably part of the high seas, the only remaining issue posed by this part of the reservation is the meaning to be attributed to the word "vessels".

Spain argues that it is clear from the parliamentary debates which preceded the adoption of Bill C-29 that the latter was intended to apply only to stateless vessels or to vessels flying a flag of convenience. It followed, according to Spain—in view of the close links between the Act and the reservation—that the latter also covered only measures taken against such vessels. Canada accepts that, when Bill C-29 was being debated, there were a number of references to stateless vessels and to vessels flying flags of convenience, for at the time such vessels posed the most immediate threat to the conservation of the stocks that it sought to protect. However, Canada denies that its intention was to restrict the scope of the Act and the reservation to these categories of vessels.

The Court observes that the Canadian reservation refers to "vessels fishing", that is to say all vessels fishing in the area in question, without exception. It would clearly have been simple enough for Canada, if this had been its real intention, to qualify the word "vessels" so as to restrict its meaning in the context of the reservation. In the opinion of the Court the interpretation proposed by Spain cannot be accepted, for it runs contrary to a clear text, which, moreover, appears to express the intention of its author. Neither can the Court share the conclusions drawn by Spain from the parliamentary debates cited by it.

Meaning and scope of the phrase "and the enforcement of such measures" (paras. 78-84)

The Court then examines the phrase "*and the enforcement of such measures*", on the meaning and scope of which the Parties disagree. Spain contends that an exercise of jurisdiction by Canada over a Spanish vessel on the high seas entailing the use of force falls outside of Canada's reservation to the Court's jurisdiction.

The Court notes that, following the adoption of Bill C-29, the provisions of the Coastal Fisheries Protection Act are of a character and type to be found in legislation of various nations dealing with fisheries conservation and management, as well as in article 22 (1) (*f*) of the United Nations Agreement on Straddling Fish Stocks of 1995. The limitations on the use of force specified in the Coastal Fisheries Protection Regulations Amendment of May 1994 also bring the authorized use of force within the category familiar in connection with enforcement of conservation measures. The Court further notes that the purpose of other Canadian enactments referred to by Spain appears to have been to control and limit any authorized use of force, thus bringing it within the general category of measures in enforcement of fisheries conservation.

For all of these reasons the Court finds that the use of force authorized by the Canadian legislation and regulations falls within the ambit of what is commonly understood as enforcement of conservation and management measures and thus falls under the provisions of paragraph 2 (*d*) of Canada's declaration. This is so notwithstanding that the reservation does not in terms mention the use of force. Boarding, inspection, arrest and minimum use of force for those purposes are all contained within the concept of enforcement of conservation and management measures according to a "natural and reasonable" interpretation of this concept.

The Court concludes by stating that in its view the dispute between the Parties, as it has been identified in this judgment, had its origin in the amendments made by Canada to its coastal fisheries protection legislation and regulations and in the pursuit, boarding and seizure of the *Estai* which resulted therefrom. Equally, the Court has no doubt that the said dispute is very largely concerned with these facts. Having regard to the legal characterization placed by the Court upon those facts, it concludes that the dispute submitted to it by Spain constitutes a dispute "arising out of" and "concerning" "conservation and management measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area" and "the enforcement of such measures". It follows that this dispute comes within the terms of the reservation contained in paragraph 2 (*d*) of the Canadian declaration of 10 May 1994. The Court consequently has no jurisdiction to adjudicate upon the present dispute.

Operative paragraph (para. 89):

"For these reasons,

THE COURT,

By twelve votes to five,

Finds that it has no jurisdiction to adjudicate upon the dispute brought before it by the Application filed by the Kingdom of Spain on 28 March 1995.

IN FAVOUR: *President* Schwebel; *Judges* Oda, Guillaume, Herczegh, Shi, Fleischhauer, Koroma, Higgins, Parra-Aranguren, Kooijmans, Rezek; *Judge ad hoc* Lalonde;

AGAINST: *Vice-President* Weeramantry; *Judges* Bedjaoui, Ranjeva, Vereshchetin; *Judge ad hoc* Torres Bernárdez."

President Schwebel and Judges Oda, Koroma and Kooijmans appended separate opinions to the judgment (*I.C.J. Reports 1998*, pp. 470-473, 474-485, 486-488 and 489-495); Vice-President Weeramantry, Judges Bedjaoui, Ranjeva and Vereshchetin and Judge ad hoc Torres Bernárdez appended dissenting opinions (ibid., pp. 496-515, 516-552, 553-569, 570-581 and 582-738).

(ix) *Kasikili/Sedudu Island (Botswana/Namibia)*

In a joint letter dated 16 February 1998, the Parties requested further written pleadings pursuant to article II, paragraph 2 (*c*), of the Special Agreement, which provides, in addition to the Memorials and Counter-Memorials, for "such other pleadings as may be approved by the Court at the request of either of the Parties, or as may be directed by the Court".

By an Order of 27 February 1998 (*I.C.J. Reports 1998*, p. 6), the Court, taking into account the agreement between the Parties, fixed 27 November 1998 as the time limit for the filing of a Reply by each of the Parties. The Replies were filed within the prescribed time limit.

(x) *Vienna Convention on Consular Relations (Paraguay* v. *United States of America)*

On 3 April 1998, the Republic of Paraguay filed in the Registry of the Court an Application instituting proceedings against the United States of America in a dispute concerning alleged violations of the Vienna Convention on Consular Relations of 24 April 1963. Paraguay based the jurisdiction of the Court on Article 36, paragraph 1, of the Court's Statute and on article I of the Optional Protocol concerning the Compulsory Settlement of Disputes which accompanies the Vienna Convention on Consular Relations, and which provides that "disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice".

In the Application it was stated that in 1992 the authorities of the Commonwealth of Virginia had arrested a Paraguayan national, Angel Francisco Breard; that he had been charged, tried, convicted of culpable homicide and sentenced to death by a Virginia court (the Circuit Court of Arlington County) in 1993, without having been informed, as is required under article 36, subparagraph 1 (*b*), of the Vienna Convention, of his rights under that provision; it was specified that among those rights were the right to request that the relevant consular office of the State of which he was a national be advised of his arrest and detention and the right to communicate with that office; it was further alleged that the authorities of the Commonwealth of Virginia also had not advised the Paraguayan consular officers of Mr. Breard's detention, and that those officers had only been able to render assistance to him from 1996, when the Paraguayan Government had learned by its own means that Mr. Breard had been imprisoned in the United States.

Paraguay further stated that Mr. Breard's subsequent petitions before federal courts in order to seek a writ of habeas corpus had failed, the federal court of first instance having, on the basis of the doctrine of "procedural default", denied him the right to invoke the Vienna Convention for the first time before that court, and the intermediate federal appellate court having confirmed that decision; that consequently, the Virginia court that sentenced Mr. Breard to the death penalty had set an execution date of 14 April 1998; that Mr. Breard, having exhausted all means

of legal recourse available to him as of right, had petitioned the United States Supreme Court for a writ of certiorari, requesting it to exercise its discretionary power to review the decision given by the lower federal courts and to grant a stay of his execution pending that review, and that, while this request was still pending before the Supreme Court, it was, however, rare for that Court to accede to such requests. Paraguay stated, moreover, that it had brought proceedings itself before the federal courts of the United States as early as 1996, with a view to obtaining the annulment of the proceedings initiated against Mr. Breard, but both the federal court of first instance and the federal appellate court had held that they had no jurisdiction in the case because it was barred by a doctrine conferring "sovereign immunity" on federated states; that Paraguay had also filed a petition for a writ of certiorari in the Supreme Court, which was also still pending; and that Paraguay had furthermore engaged in diplomatic efforts with the Government of the United States and sought the good offices of the Department of State.

Paraguay maintained that by violating its obligations under article 36, subparagraph 1 (*b*), of the Vienna Convention, the United States had prevented Paraguay from exercising the consular functions provided for in articles 5 and 36 of the Convention and specifically for ensuring the protection of its interests and of those of its nationals in the United States; Paraguay stated that it had not been able to contact Mr. Breard or to offer him the necessary assistance, and that accordingly Mr. Breard had "made a number of objectively unreasonable decisions during the criminal proceedings against him, which were conducted without translation"; and had not comprehended "the fundamental differences between the criminal justice systems of the United States and Paraguay"; Paraguay concluded from this that it was entitled to restitutio in integrum, that is to say "the re-establishment of the situation that existed before the United States failed to provide the notifications … required by the Convention".

Paraguay requested the Court to adjudge and declare as follows:

> "(1) That the United States, in arresting, detaining, trying, convicting, and sentencing Angel Francisco Breard, as described in the preceding statement of facts, violated its international legal obligations to Paraguay, in its own right and in the exercise of its right of diplomatic protection of its national, as provided by articles 5 and 36 of the Vienna Convention;
>
> "(2) That Paraguay is therefore entitled to restitutio in integrum;
>
> "(3) That the United States is under an international legal obligation not to apply the doctrine of 'procedural default', or any other doctrine of its internal law, so as to preclude the exercise of the rights accorded under article 36 of the Vienna Convention; and
>
> "(4) That the United States is under an international legal obligation to carry out in conformity with the foregoing international legal obligations any future detention of or criminal proceedings against Angel Francisco Breard or any other Paraguayan national in its territory, whether by a constituent, legislative, executive, judicial or other power, whether that power holds a superior or a subordinate position in the organization of the United States, and whether that power's functions are of an international or internal character;

and that, pursuant to the foregoing international legal obligations,

> "(1) Any criminal liability imposed on Angel Francisco Breard in violation of international legal obligations is void, and should be recognized as void by the legal authorities of the United States;

"(2) The United States should restore the status quo ante, that is, re-establish the situation that existed before the detention of, proceedings against, and conviction and sentencing of Paraguay's national in violation of the United States' international legal obligations took place; and

"(3) The United States should provide Paraguay a guarantee of the non-repetition of the illegal acts."

On the same day, 3 April 1998, Paraguay, "in view of the extreme gravity and immediacy of the threat that the authorities … will execute a Paraguayan citizen", submitted an urgent request for the indication of provisional measures, asking that, pending final judgment in the case, the Court indicate:

"(*a*) That the Government of the United States take the measures necessary to ensure that Mr. Breard not be executed pending the disposition of this case;

"(*b*) That the Government of the United States report to the Court the actions it has taken in pursuance of subparagraph (*a*) immediately above and the results of those actions: and

"(*c*) That the Government of the United States ensure that no action is taken that might prejudice the rights of the Republic of Paraguay with respect to any decision this Court may render on the merits of the case."

By identical letters dated 3 April 1998, the Vice-President of the Court, Acting President, addressed both Parties in the following terms:

"Exercising the functions of the presidency in terms of Articles 13 and 32 of the Rules of Court, and acting in conformity with Article 74, paragraph 4, of the said Rules, I hereby draw the attention of both Parties to the need to act in such a way as to enable any Order the Court will make on the request for provisional measures to have its appropriate effects."

At a meeting held the same day with the representatives of both Parties, he advised them that the Court would hold public hearings on 7 April 1998 at 10 a.m., in order to afford the Parties the opportunity of presenting their observations on the request for provisional measures.

After those hearings had been held, the Vice-President of the Court, Acting President, at a public sitting of 9 April 1998, read the Order on the request for provisional measures made by Paraguay (*I.C.J. Reports 1998*, p. 248), by which the Court unanimously indicated that the United States had to take all measures at its disposal to ensure that Angel Francisco Breard would not be executed pending the final decision in the proceedings, and had to inform the Court of all the measures which it had taken in implementation of that Order; and decided that, until the Court had given its final decision, it should remain seised of the matters which formed the subject matter of that Order.

President Schwebel and Judges Oda and Koroma appended declarations to the Order of the Court (*I.C.J. Reports 1998*, pp. 259, 260-262 and 263-264).

By an Order of the same day, 9 April 1998 (*I.C.J. Reports 1998*, p. 266), the Vice-President of the Court, Acting President, taking into account the Court's Order on provisional measures, in which it was stated that "it is appropriate that the Court, with the cooperation of the Parties, ensure that any decision on the merits be reached with all possible expedition" and a subsequent agreement between the Parties, fixed 9 June 1998 as the time limit for the Memorial of Paraguay and 9 September 1998 for the Counter-Memorial of the United States.

In response to a request from Paraguay made in the light of the execution of Mr. Breard, and taking into account an agreement on extension of time limits reached by the Parties, the Vice-President, Acting President, by an Order of 8 June 1998 (*I.C.J. Reports 1998*, p. 272), extended the above-mentioned time limits to 9 October 1998 and 9 April 1999 respectively. Paraguay's Memorial was filed within the time limit thus extended.

By a letter of 2 November 1998, Paraguay informed the Court that it wished to discontinue the proceedings with prejudice and requested that the case be removed from the List.

After the United States had informed the Court that it concurred in Paraguay's request, the Court, in an Order of 10 November 1998 (*I.C.J. Reports 1998*, p. 426), placed the discontinuance by Paraguay on record and ordered the removal of the case from the List.

(xi) *Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the* Land and Maritime Boundary between Cameroon and Nigeria (Cameroon *v.* Nigeria)*,* Preliminary Objections *(Nigeria* v. *Cameroon)*

On 28 October 1998, the Federal Republic of Nigeria filed in the Registry of the Court an Application instituting proceedings against the Republic of Cameroon dated 21 October 1998, whereby it requested the Court to interpret the judgment delivered by the Court on 11 June 1998 in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Preliminary Objections*.

Since a request for the interpretation of a judgment is made either by an application or by the notification of a special agreement, it gives rise to a new case. Nigeria's request, which does not fall into the category of incidental proceedings, does not therefore form part of the current proceedings in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria)*.

In its request, Nigeria set out that "one aspect of the case before the Court is the alleged international responsibility borne by Nigeria for certain incidents said to have occurred at various places in Bakassi and Lake Chad and along the length of the frontier between those two regions". Nigeria contended that Cameroon had made "allegations involving a number of such incidents in its Application of 29 March 1994, its Additional Application of 6 June 1994, its Observations of 30 April 1996 on Nigeria's Preliminary Objections, and during the oral hearings held from 2 to 11 March 1998", and that Cameroon had also said that it "would be able to provide information as to other incidents on some unspecified future occasion". In the view of Nigeria, the Court's judgment "[did] not specify which of these alleged incidents [were] to be considered as part of the merits of the case" and accordingly, "the meaning and scope of the Judgment require[d] interpretation".

The full text of Nigeria's submissions read as follows:

> "Nigeria requests the Court to adjudge and declare that the Court's Judgment of 11 June 1998 is to be interpreted as meaning that:
>
> "So far as concerns the international responsibility which Nigeria is said to bear for certain alleged incidents:
>
> "(*a*) The dispute before the Court does not include any alleged incidents other than (at most) those specified in Cameroon's Application of 29 March 1994 and Additional Application of 6 June 1994;

"(*b*) Cameroon's freedom to present additional facts and legal considerations relates (at most) only to those specified in Cameroon's Application of 29 March 1994 and Additional Application of 6 June 1994; and

"(*c*) The question whether facts alleged by Cameroon are established or not relates (at most) only to those specified in Cameroon's Application of 29 March 1994 and Additional Application of 6 June 1994."

The Senior Judge, Acting President, fixed 3 December 1998 as the time limit for Cameroon to submit its written observations on Nigeria's request for interpretation. Those written observations were filed within the time limit fixed. In the light of the dossier thus submitted, the Court did not deem it necessary to invite the Parties to furnish further written or oral explanations.

Nigeria chose Prince Bola Ajibola and Cameroon Kéba Mbaye to sit as judges ad hoc in the case.

(xii) *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*

On 2 November 1998, the Republic of Indonesia and Malaysia jointly notified to the Court a Special Agreement between the two States, signed at Kuala Lumpur on 31 May 1997 and having entered into force on 14 May 1998, in which they request the Court

"to determine on the basis of the treaties, agreements and any other evidence furnished by the Parties, whether sovereignty over Pulau Ligitan and Pulau Sipadan belongs to the Republic of Indonesia or to Malaysia";

By an order of 10 November 1998 (*I.C.J. Reports 1998*, p. 429), the Court, taking into account the provisions of the Special Agreement on the written pleadings, fixed 2 November 1999 and 2 March 2000 respectively as the time limits for the filing by each of the Parties of a Memorial and a Counter-Memorial.

(xiii) *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)*

On 28 December 1998, the Republic of Guinea instituted proceedings against the Democratic Republic of the Congo by an "Application with a view to diplomatic protection", in which it requested the Court to "condemn the Democratic Republic of the Congo for the grave breaches of international law perpetrated upon the person of a Guinean national", Mr. Ahmadou Sadio Diallo.

According to Guinea, Mr. Ahmadou Sadio Diallo, a businessman who had been a resident of the Democratic Republic of the Congo for 32 years, was "unlawfully imprisoned by the authorities of that State" during two and a half months, "divested from his important investments, companies, bank accounts, movable and immovable properties, then expelled" on 2 February 1996 as a result of his attempts to recover sums owed to him by the Democratic Republic of the Congo (especially by Gécamines, a State enterprise with a monopoly with regard to mining) and by oil companies operating in that country (Zaire Shell, Zaire Mobil and Zaire Fina) by virtue of contracts concluded with businesses owned by him, Africom-Zaire and Africacontainers-Zaire.

As a basis of the Court's jurisdiction, Guinea invoked its own declaration of acceptance of the compulsory jurisdiction of the Court, of 11 November 1998, and the declaration of the Democratic Republic of the Congo of 8 February 1989.

(*b*) Request for advisory opinion

Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights

On 5 August 1998, the United Nations Economic and Social Council adopted decision 1998/297, the text of which reads as follows:

"*The Economic and Social Council*,

"*Having considered* the note by the Secretary-General on the privileges and immunities of the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers (E/1998/94),

"*Considering* that a difference has arisen between the United Nations and the Government of Malaysia, within the meaning of section 30 of the Convention on the Privileges and Immunities of the United Nations, with respect to the immunity from legal process of Dato' Param Cumaraswamy, the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers,

"*Recalling* General Assembly resolution 89 (I) of 11 December 1946,

"1. *Requests* on a priority basis, pursuant to Article 96, paragraph 2, of the Charter of the United Nations and in accordance with General Assembly resolution 89 (I), an advisory opinion from the International Court of Justice on the legal question of the applicability of article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations in the case of Dato' Param Cumaraswamy as Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers, taking into account the circumstances set out in paragraphs 1 to 15 of the note by the Secretary-General (ibid.), and on the legal obligations of Malaysia in this case;

"2. *Calls upon* the Government of Malaysia to ensure that all judgements and proceedings in this matter in the Malaysian courts are stayed pending receipt of the advisory opinion of the International Court of Justice, which shall be accepted as decisive by the parties."

By a letter dated 7 August 1998, filed in the Registry of the Court on 10 August 1998, the Secretary-General officially communicated the Council's decision to the Court. Enclosed with the letter was a note by the Secretary-General dated 28 July 1998 entitled "Privileges and Immunities of the Special Rapporteur of the Commission on Human Rights on the Independence of Judges and Lawyers" (E/l998/94) and an addendum to that note.

By an Order of the same date, 10 August 1998 (*I.C.J. Reports 1998*, p. 423), the Senior Judge, Acting President, bearing in mind that the request was made "on a priority basis", fixed 7 October 1998 as the time limit within which written statements on the question might be submitted to the Court by the United Nations and the States which are parties to the Convention on the Privileges and Immunities of the United Nations. The time limit for written comments on written statements was fixed at 6 November 1998.

Within the time limit fixed by the Order of 10 August 1998, written statements were filed by the Secretary-General of the United Nations and by Costa Rica, Germany, Italy, Malaysia, Sweden, the United Kingdom and the United States of America; the filing of a written statement by Greece on 12 October 1998 was authorized. A related letter was also received from Luxembourg on 29 October 1998. Written comments on the statements were submitted, within the prescribed time

limit, by the Secretary-General of the United Nations and by Costa Rica, Malaysia and the United States of America.

In the course of public sittings held on 7, 8 and 10 December 1998, the Court heard oral statements for the United Nations, Costa Rica, Italy and Malaysia.

At a public sitting held on 29 April 1999, the Court delivered its advisory opinion (*I.C.J. Reports 1999*, p. 62), a summary of which is given below, followed by the text of the operative paragraph.

Review of the proceedings and summary of facts (paras. 1-21)

After outlining the successive stages of the proceedings (paras. 1-9), the Court observes that in its decision 1998/297, the Council asked the Court to take into account, for purposes of the advisory opinion requested, the "circumstances set out in paragraphs 1 to 15 of the note by the Secretary-General" (E/1998/94). The text of those paragraphs is then reproduced. They set out the following:

In 1946, the General Assembly adopted, pursuant to Article 105 (3) of the Charter, the Convention on the Privileges and Immunities of the United Nations (the Convention), to which 137 Member States have become parties and provisions of which have been incorporated by reference into many hundreds of agreements relating to the United Nations and its activities. The Convention is, inter alia, designed to protect various categories of persons, including "experts on mission for the United Nations", from all types of interference by national authorities. In particular, section 22 (*b*), article VI, of the Convention provides:

> "*Section 22*: Experts (other than officials coming within the scope of article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including time spent on journeys in connection with their missions. In particular they shall be accorded:
>
> . . .
>
> "(*b*)" In respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations."

In its advisory opinion of 14 December 1989 (in the so-called "*Mazilu*" case), the Court held that a Special Rapporteur of the Subcommission on the Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights was an "expert on mission" within the meaning of article VI of the Convention.

The Commission on Human Rights in 1994 appointed Dato' Param Cumaraswamy, a Malaysian jurist, as the Commission's Special Rapporteur on the independence of judges and lawyers. His mandate consists of tasks including to enquire into substantial allegations concerning, and to identify and record attacks on, the independence of the judiciary, lawyers and court officials. Mr. Cumaraswamy has submitted four reports to the Commission on the execution of his mandate. After the third report containing a section on the litigation pending against him in the Malaysian civil courts, the Commission, in April 1997, renewed his mandate for an additional three years.

As a result of an article published on the basis of an interview which the Special Rapporteur gave to a magazine (*International Commercial Litigation*) in

November 1995, two commercial companies in Malaysia asserted that the said article contained defamatory words that had "brought them into public scandal, odium and contempt". Each company filed a suit against him for damages amounting to M$ 30 million (approximately US$ 12 million each), "including exemplary damages for slander".

Acting on behalf of the Secretary-General, the Legal Counsel of the United Nations considered the circumstances of the interview and of the controverted passages of the article and determined that Dato' Param Cumaraswamy had been interviewed in his official capacity as Special Rapporteur on the independence of judges and lawyers, that the article clearly referred to his United Nations capacity and to the Special Rapporteur's global mandate to investigate allegations concerning the independence of the judiciary and that the quoted passages related to such allegations. On 15 January 1997, the Legal Counsel, in a note verbale, "requested the competent Malaysian authorities to promptly advise the Malaysian courts of the Special Rapporteur's immunity from legal process" with respect to that particular complaint. On 20 January 1997, the Special Rapporteur filed an application in the High Court of Kuala Lumpur (the trial court in which the suit had been filed) to set aside and/or strike out the plaintiffs' writ, on the ground that the words that were the subject of the suits had been spoken by him in the course of performing his mission for the United Nations as Special Rapporteur on the independence of judges and lawyers. The Secretary-General issued a note on 7 March 1997 confirming that "the words which constitute the basis of plaintiffs' complaint in this case were spoken by the Special Rapporteur in the course of his mission" and that the Secretary-General "therefore maintains that Dato' Param Cumaraswamy is immune from legal process with respect thereto". The Special Rapporteur filed this note in support of his above-mentioned application.

In spite of representations that had been made by the Office of Legal Affairs, a certificate filed by the Malaysian Minister for Foreign Affairs with the trial court failed to refer in any way to the note that the Secretary-General had issued a few days earlier and that had in the meantime been filed with the court, nor did it indicate that in this respect, that is, in deciding whether particular words or acts of an expert fell within the scope of his mission, the determination could exclusively be made by the Secretary-General, and that such determination had conclusive effect and therefore had to be accepted as such by the court. In spite of repeated requests by the Legal Counsel, the Minister for Foreign Affairs refused to amend his certificate or to supplement it in the manner urged by the United Nations.

On 28 June 1997, the competent judge of the Malaysian High Court for Kuala Lumpur concluded that she was "unable to hold that the Defendant is absolutely protected by the immunity he claims", in part because she considered that the Secretary-General's note was merely "an opinion" with scant probative value and no binding force upon the court and that the Minister for Foreign Affairs' certificate "would appear to be no more than a bland statement as to a state of fact pertaining to the Defendant's status and mandate as a Special Rapporteur and appears to have room for interpretation". The Court ordered that the Special Rapporteur's motion be dismissed with costs, that costs be taxed and paid forthwith by him and that he file and serve his defence within 14 days. On 8 July, the Court of Appeal dismissed Mr. Cumaraswamy's motion for a stay of execution.

In July 1997, the Legal Counsel called on the Malaysian Government to intervene in the current proceedings so that the burden of any further defence, including

any expenses and taxed costs resulting therefrom, could be assumed by the Government; to hold Mr. Cumaraswamy harmless in respect of the expenses he had already incurred or that were being taxed to him in respect of the proceedings so far; and, so as to prevent the accumulation of additional expenses and costs and the further need to submit a defence until the matter of his immunity was definitively resolved between the United Nations and the Government, to support a motion to have the High Court proceedings stayed until such resolution. The Legal Counsel referred to the provisions for the settlement of differences arising out of the interpretation and application of the 1946 Convention that might arise between the Organization and a member State, which are set out in section 30 of the Convention, and indicated that if the Government decided that it could not or did not wish to protect and to hold harmless the Special Rapporteur in the indicated manner, a difference within the meaning of those provisions might be considered to have arisen between the Organization and the Government of Malaysia.

Section 30 of the Convention provides as follows:

> "*Section 30*: All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties."

On 10 July 1997, yet another lawsuit was filed against the Special Rapporteur. On 11 July, the Secretary-General issued a note corresponding to the one of 7 March 1997 and also communicated a note verbale with essentially the same text to the Permanent Representative of Malaysia with the request that it be presented formally to the competent Malaysian court by the Government. On 23 October and 21 November 1997, new plaintiffs filed third and fourth lawsuits against the Special Rapporteur. On 27 October and 22 November 1997, the Secretary-General issued identical certificates of the Special Rapporteur's immunity.

On 7 November 1997, the Secretary-General advised the Prime Minister of Malaysia that a difference might have arisen between the United Nations and the Government of Malaysia and about the possibility of resorting to the International Court of Justice pursuant to section 30 of the Convention. Nonetheless on 19 February 1998, the Federal Court of Malaysia denied Mr. Cumaraswamy's application for leave to appeal, stating that he was neither a sovereign nor a full-fledged diplomat but merely "an unpaid, part-time provider of information".

The Secretary-General then appointed a Special Envoy, Maître Yves Fortier of Canada, who, after two official visits to Kuala Lumpur, and after negotiations to reach an out-of-court settlement had failed, advised that the matter should be referred to the Council to request an advisory opinion from the International Court of Justice. The United Nations had exhausted all efforts to reach either a negotiated settlement or a joint submission through the Council to the International Court of Justice. In that connection, the Government of Malaysia had acknowledged the Organization's right to refer the matter to the Economic and Social Council to request an advisory opinion in accordance with section 30 of the Convention, advised the Secretary-General's Special Envoy that the United Nations should proceed to do so, and indicated that, while it would make its own presentations to the International

Court of Justice, it did not oppose the submission of the matter to that Court through the Council.

*

After reproducing paragraphs 1 to 15 of the Secretary-General's note, the Court then refers to the dossier of documents submitted to it by the Secretary-General, which contains additional information that bears on an understanding of the request to the Court, concerning the context in which Mr. Cumaraswamy was asked to give his comments; concerning the proceedings against Mr. Cumaraswamy in the High Court of Kuala Lumpur, which did not pass upon Mr. Cumaraswamy's immunity *in limine litis*, but held that it had jurisdiction to hear the case before it on the merits, including making a determination of whether Mr. Cumaraswamy was entitled to any immunity, a decision upheld by both the Court of Appeal and the Federal Court of Malaysia; and concerning the regular reports which the Special Rapporteur made to the Commission on Human Rights and in which he reported on the lawsuits initiated against him. The Court further refers to the consideration and adoption without a vote by the Council of the draft decision requesting the Court to give an advisory opinion on the question formulated therein, and the fact that at that meeting, the observer for Malaysia confirmed his previous criticism of the Secretary-General's note, but made no comment on the terms of the question to be put to the Court as currently formulated by the Council. Finally, Malaysia's information on the status of proceedings in the Malaysian courts is referred to.

The Court's power to give an advisory opinion (paras. 22-27)

The Court begins by observing that this is the first time that the Court has received a request for an advisory opinion that refers to article VIII, section 30, of the General Convention, quoted above.

That section provides for the exercise of the Court's advisory function in the event of a difference between the United Nations and one of its Members. The existence of such a difference does not change the advisory nature of the Court's function, which is governed by the terms of Article 96 of the Charter of the United Nations and Article 65 of the Statute of the Court. A distinction should thus be drawn between the advisory nature of the Court's task and the particular effects that parties to an existing dispute may wish to attribute, in their mutual relations, to an advisory opinion of the Court, which, "as such, ... has no binding force". These particular effects, extraneous to the Charter and the Statute, which regulate the functioning of the Court, are derived from separate agreements; in the present case, article VIII, section 30, of the General Convention provides that "[t]he opinion given by the Court shall be accepted as decisive by the parties". That consequence has been expressly acknowledged by the United Nations and by Malaysia.

The power of the Court to give an advisory opinion is derived from Article 96, paragraph 2, of the Charter and from Article 65 of the Statute. Both provisions require that the question forming the subject matter of the request should be a "legal question". That condition is satisfied in the present case, as all participants in the proceedings have acknowledged, because the advisory opinion requested relates to the interpretation of the General Convention, and to its application to the circumstances of the case of the Special Rapporteur, Dato' Param Cumaraswamy.

Article 96, paragraph 2, of the Charter also requires that the legal questions forming the subject matter of advisory opinions requested by authorized organs of the United Nations and specialized agencies shall arise "within the scope of their activities". The fulfilment of this condition has not been questioned by any of the

participants in the present proceedings. The Court finds that the legal questions submitted by the Council in its request concern the activities of the Commission since they relate to the mandate of its Special Rapporteur appointed "to inquire into substantial allegations concerning, and to identify and record attacks on the independence of the judiciary, lawyers and court officials".

Discretionary power of the Court (paras. 28-30)

As the Court held in its advisory opinion of 30 March 1950, the permissive character of Article 65 of the Statute "gives the Court the power to examine whether the circumstances of the case are of such a character as should lead it to decline to answer the Request" (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 72). In the present case, the Court, having established its jurisdiction, finds no compelling reasons not to give the advisory opinion requested by the Council. Moreover, no participant in these proceedings questioned the need for the Court to exercise its advisory function in this case.

The question on which the opinion is requested (paras. 31-37)

As the Council indicated in the preamble to its decision 1998/297, that decision was adopted by the Council on the basis of the note submitted by the Secretary-General on "Privileges and immunities of the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers". Paragraph 1 of the operative part of the decision refers expressly to paragraphs 1 to 15 of that note but not to paragraph 21, containing two questions that the Secretary-General proposed submitting to the Court. The Court would point out that the wording of the question submitted by the Council is quite different from that proposed by the Secretary-General.

Participants in these proceedings, including Malaysia and other States, have advanced differing views as to what is the legal question to be answered by the Court. The Court observes that it is for the Council, and not for a Member State or the Secretary-General, to formulate the terms of a question that the Council wishes to ask. Accordingly, the Court will now answer the question as formulated by the Council.

Applicability of article VI, section 22, of the General Convention to Special Rapporteurs of the Commission on Human Rights (paras. 38-46)

The Court initially examines the first part of the question laid before it by the Council, which is:

> "the legal question of the applicability of article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations in the case of Dato' Param Cumaraswamy as Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers, taking into account the circumstances set out in paragraphs 1 to 15 of the note by the Secretary-General".

From the deliberations which took place in the Council it is clear that the request of the Council does not only pertain to the threshold question whether Mr. Cumaraswamy was and is an expert on mission in the sense of article VI, section 22, of the General Convention but, in the event of an affirmative answer to this question, to the consequences of that finding in the circumstances of the case. The Court notes

that Malaysia became a party to the General Convention, without reservation, on 28 October 1957. (Part of section 22 of article VI of that Convention is quoted above.)

The Court then recalls that in its advisory opinion of 14 December 1989 (the so-called "*Mazilu*" case), it stated:

> "The purpose of section 22 is … evident, namely, to enable the United Nations to entrust missions to persons who do not have the status of an official of the Organization, and to guarantee them 'such privileges and immunities as are necessary for the independent exercise of their functions'. … The essence of the matter lies not in their administrative position but in the nature of their mission." (*I.C.J. Reports 1989*, p. 194, para. 47.)

In the same advisory opinion, it concluded that a Special Rapporteur who is appointed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities and is entrusted with a research mission must be regarded as an expert on mission within the meaning of article VI, section 22, of the General Convention.

The Court finds that the same conclusion must be drawn with regard to Special Rapporteurs appointed by the Commission on Human Rights, of which the Sub-Commission is a subsidiary organ. It observes that Special Rapporteurs of the Commission usually are entrusted not only with a research mission but also with the task of monitoring human rights violations and reporting on them. But what is decisive is that they have been entrusted with a mission by the United Nations and are therefore entitled to the privileges and immunities provided for in article VI, section 22, that safeguard the independent exercise of their functions. After examining Mr. Cumaraswamy's mandate, the Court finds that he must be regarded as an expert on mission within the meaning of article VI, section 22, as from 21 April 1994, that by virtue of this capacity the provisions of this section were applicable to him at the time of his statements at issue, and that they continue to be applicable.

The Court finally observes that Malaysia has acknowledged that Mr. Cumaraswamy, as Special Rapporteur of the Commission, is an expert on mission and that such experts enjoy the privileges and immunities provided for under the General Convention in their relations with States parties, including those of which they are nationals or on the territory of which they reside. Malaysia and the United Nations are in full agreement on these points, as are the other States participating in the proceedings.

Applicability of article VI, section 22, of the General Convention in the specific circumstances of the case (paras. 47-56)

The Court then considers the question whether the immunity provided for in section 22 (*b*) applies to Mr. Cumaraswamy in the specific circumstances of the case; namely, whether the words used by him in the interview, as published in the article in *International Commercial Litigation* (November 1995 issue), were spoken in the course of the performance of his mission, and whether he was therefore immune from legal process with respect to these words.

In the process of determining whether a particular expert on mission is entitled, in the prevailing circumstances, to the immunity provided for in section 22 (*b*), the Secretary-General of the United Nations has a pivotal role to play. The Secretary-General, as the chief administrative officer of the Organization, has the authority and the responsibility to exercise the necessary protection where required. Article VI, section 23, of the General Convention provides that "[p]rivileges and immunities

are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves". In exercising protection of United Nations experts, the Secretary-General is therefore protecting the mission with which the expert is entrusted. In that respect, the Secretary-General has the primary responsibility and authority to protect the interests of the Organization and its agents, including experts on mission.

The determination whether an agent of the Organization has acted in the course of the performance of his mission depends upon the facts of a particular case. In the present case, the Secretary-General, or the Legal Counsel of the United Nations on his behalf, has on numerous occasions informed the Government of Malaysia of his finding that Mr. Cumaraswamy had spoken the words quoted in the article in *International Commercial Litigation* in his capacity as Special Rapporteur of the Commission and that he consequently was entitled to immunity from "every kind" of legal process. The Secretary-General was reinforced in this view by the fact that it has become standard practice of Special Rapporteurs of the Commission to have contact with the media.

The Court notes that Mr. Cumaraswamy was explicitly referred to several times in the article entitled "Malaysian Justice on Trial" in *International Commercial Litigation* in his capacity as United Nations Special Rapporteur on the independence of judges and lawyers, and further that in its various resolutions the Commission took note of the Special Rapporteur's reports and of his methods of work. In 1997, it extended his mandate for another three years. The Commission presumably would not have so acted if it had been of the opinion that Mr. Cumaraswamy had gone beyond his mandate and had given the interview to *International Commercial Litigation* outside the course of his functions. Thus the Secretary-General was able to find support for his findings in the Commission's position.

The Court concludes that it is not called upon in the present case to pass upon the aptness of the terms used by the Special Rapporteur or his assessment of the situation. In any event, in view of all the circumstances of this case, elements of which are set out in paragraphs 1 to 15 of the note by the Secretary-General, the Court is of the opinion that the Secretary-General correctly found that Mr. Cumaraswamy, in speaking the words quoted in the article in *International Commercial Litigation*, was acting in the course of the performance of his mission as Special Rapporteur of the Commission. Consequently, article VI, section 22 (*b*), of the General Convention is applicable to him in the present case and affords Mr. Cumaraswamy immunity from legal process of every kind.

Legal obligations of Malaysia in the case (paras. 57-65)

The Court then deals with the second part of the Council's question, namely, "the legal obligations of Malaysia in this case". Rejecting Malaysia's argument that it is premature to deal with that question, the Court points out that the difference which has arisen between the United Nations and Malaysia originated in the failure of the Government of Malaysia to inform the competent Malaysian judicial authorities of the Secretary-General's finding that Mr. Cumaraswamy had spoken the words at issue in the course of the performance of his mission and was, therefore, entitled to immunity from legal process. It is as from the time of this omission that the question before the Court must be answered.

As the Court has observed, the Secretary-General, as the chief administrative officer of the Organization, has the primary responsibility to safeguard the interests

of the Organization; to that end, it is up to him to assess whether its agents acted within the scope of their functions and, where he so concludes, to protect these agents, including experts on mission, by asserting their immunity. This means that the Secretary-General has the authority and responsibility to inform the Government of a Member State of his finding and, where appropriate, to request it to act accordingly and, in particular, to request it to bring his finding to the knowledge of the local courts if acts of an agent have given or may give rise to court proceedings. That finding, and its documentary expression, creates a presumption of immunity which can only be set aside for the most compelling reasons and is thus to be given the greatest weight by national courts. The governmental authorities of a party to the General Convention are therefore under an obligation to convey such information to the national courts concerned, since a proper application of the Convention by them is dependent on such information. Failure to comply with this obligation, among others, could give rise to the institution of proceedings under article VIII, section 30, of the General Convention.

The Court concludes that the Government of Malaysia had an obligation, under Article 105 of the Charter and under the General Convention, to inform its courts of the position taken by the Secretary-General. According to a well-established rule of international law, the conduct of any organ of a State must be regarded as an act of that State. Because the Government did not transmit the Secretary-General's finding to the competent courts, and the Minister for Foreign Affairs did not refer to it in his own certificate, Malaysia did not comply with the above-mentioned obligation.

Section 22 (*b*) of the General Convention explicitly states that experts on mission shall be accorded immunity from legal process of every kind in respect of words spoken or written and acts done by them in the course of the performance of their mission. By necessary implication, questions of immunity are therefore preliminary issues which must be expeditiously decided *in limine litis*. This is a generally recognized principle of law, and Malaysia was under an obligation to respect it. The Malaysian courts did not rule *in limine litis* on the immunity of the Special Rapporteur, thereby nullifying the essence of the immunity rule contained in section 22 (*b*). Moreover, costs were taxed to Mr. Cumaraswamy while the question of immunity was still unresolved. As indicated above, the conduct of an organ of a State, even an organ independent of the executive power, must be regarded as an act of that State. Consequently, Malaysia did not act in accordance with its obligations under international law.

The Court adds that the immunity from legal process to which it finds Mr. Cumaraswamy entitled entails holding Mr. Cumaraswamy financially harmless for any costs imposed upon him by the Malaysian courts, in particular taxed costs.

It further observes that, according to article VIII, section 30, of the General Convention, the opinion given by the Court shall be accepted as decisive by the parties to the dispute. Malaysia has acknowledged its obligations under section 30. Since the Court holds that Mr. Cumaraswamy is an expert on mission who under section 22 (*b*) is entitled to immunity from legal process, the Government of Malaysia is obligated to communicate this advisory opinion to the competent Malaysian courts, in order that Malaysia's international obligations be given effect and Mr. Cumaraswamy's immunity be respected.

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Finally, the Court points out that the question of immunity from legal process is distinct from the issue of compensation for any damages incurred as a result of acts

performed by the United Nations or by its agents acting in their official capacity. The United Nations may be required to bear responsibility for the damage arising from such acts. However, as is clear from article VIII, section 29, of the General Convention, such compensation claims against the United Nations shall not be dealt with by national courts but shall be settled in accordance with the appropriate modes of settlement that the "United Nations shall make provisions for" pursuant to section 29. The Court furthermore considers that it need hardly be said that all agents of the United Nations, in whatever official capacity they act, must take care not to exceed the scope of their functions, and should so comport themselves as to avoid claims against the United Nations.

Operative paragraph (para. 67):

"For these reasons,

THE COURT

Is of the opinion:

(1) (*a*) By fourteen votes to one,

That article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations is applicable in the case of Dato' Param Cumaraswamy as Special Rapporteur of the Commission on Human Rights on the Independence of Judges and Lawyers;

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek;

AGAINST: *Judge* Koroma;

(*b*) By fourteen votes to one,

That Dato' Param Cumaraswamy is entitled to immunity from legal process of every kind for the words spoken by him during an interview as published in an article in the November 1995 issue of *International Commercial Litigation*;

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek;

AGAINST: *Judge* Koroma;

(2) (*a*) By thirteen votes to two,

That the Government of Malaysia had the obligation to inform the Malaysian courts of the finding of the Secretary-General that Dato' Param Cumaraswamy was entitled to immunity from legal process;

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Bedjaoui, Guillaume, Ranjeva, Herczegh. Shi. Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek;

AGAINST: *Judges* Oda, Koroma;

(*b*) By fourteen votes to one,

That the Malaysian courts had the obligation to deal with the question of immunity from legal process as a preliminary issue to be expeditiously decided *in limine litis*;

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek;

AGAINST: *Judge* Koroma;

(3) Unanimously,

That Dato' Param Cumaraswamy shall be held financially harmless for any costs imposed upon him by the Malaysian courts, in particular taxed costs;

(4) By thirteen votes to two,

That the Government of Malaysia has the obligation to communicate this advisory opinion to the Malaysian courts, in order that Malaysia's international obligations be given effect and Dato' Param Cumaraswamy's immunity be respected;

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek;

AGAINST: *Judges* Oda, Koroma."

*

Vice-President Weeramantry and Judges Oda and Rezek appended separate opinions to the Advisory Opinion (*I.C.J. Reports 1999*, pp. 92-98, 99-108 and 109-110); Judge Koroma appended a dissenting opinion (ibid., pp. 111-122).

Consideration by the General Assembly

The General Assembly, by its decision 53/412 of 27 October 1998, took note of the report of the International Court of Justice.[124]

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6. INTERNATIONAL LAW COMMISSION[125]

(*a*) Fiftieth session of the Commission[126]

The International Law Commission held the first part of the fiftieth session at its seat at the United Nations Office at Geneva, from 20 April to 12 June 1998, and the second part at United Nations Headquarters in New York, from 27 July to 14 August 1998. The Commission commemorated its fiftieth anniversary by: (*a*) holding a seminar on critical evaluation of the work of the Commission and lessons learned for its future; (*b*) having been presented with two publications, namely, *Making Better International Law: the International Law Commission at 50*[127] and *Analytical Guide to the Work of the International Law Commission, 1949-1997*;[128] and (*c*) the creation of the International Law Commission web site maintained by the Codification Division.

During the course of the fiftieth session, in connection with the topic "International liability for injurious consequences arising out of acts not prohibited by international law", the Commission adopted on first reading a set of 17 draft articles with commentaries on prevention of transboundary damage from hazardous activities and decided to transmit the draft articles to Governments for comments and observations.

The Commission considered the preliminary report of the Special Rapporteur on the topic "Diplomatic protection", which dealt with the legal nature of diplomatic protection and the nature of the rules governing the topic. It established a Working

Group to consider possible conclusions which might be drawn on the basis of the discussion as to the approach to the topic and also to provide directions in respect of issues which should be covered by the report of the Special Rapporteur for the next session of the Commission. At the conclusion of its report, the Working Group suggested that the Special Rapporteur, in his second report, should concentrate on the issues raised in chapter one, "Basis for diplomatic protection", of the outline proposed by the previous year's Working Group.

In connection with the topic "Unilateral acts of States", the Commission examined the first report of the Special Rapporteur. The discussion concentrated mainly on the scope of the topic, the definition and elements of unilateral acts, the approach to the topic and the final form of the Commission's work thereon. There was general endorsement for limiting the topic to unilateral acts of States issued for the purpose of producing international legal effects and for elaborating possible draft articles with commentaries on the matter. The Commission requested the Special Rapporteur, when preparing his second report, to submit draft articles on the definition of unilateral acts and the scope of the draft articles and to proceed further with the examination of the topic, focusing on aspects concerning the elaboration and conditions of validity of the unilateral acts of States.

In connection with the topic of "State responsibility", the Commission considered the first report of the Special Rapporteur, which dealt with general issues relating to the draft, the distinction between "crimes" and "delictual" responsibility, and articles 1 to 15 of part one of the draft. The Commission established a Working Group to assist the Special Rapporteur in the consideration of various issues during the second reading of the draft articles. The Commission decided to refer draft articles 1 to 15 to the Drafting Committee, and took note of the subsequent report of the Drafting Committee.

As regards the topic of "Nationality in relation to the succession of States", the Commission considered the fourth report of the Special Rapporteur and established a Working Group to consider the question of the possible orientation to be given to the second part of the topic dealing with the nationality of legal persons.

With respect to the topic of "Reservations to treaties", the Commission considered the third report of the Special Rapporteur concerning the definition of reservations (and interpretative declarations). The Commission adopted seven draft guidelines on definition of reservations, object of reservations, instances in which reservations may be formulated, reservations having territorial scope, reservations formulated when notifying territorial application, reservations formulated jointly and on the relationship between definitions and admissibility of reservations.

(*b*) Consideration by the General Assembly

At its fifty-third session, the General Assembly, on the recommendation of the Sixth Committee, adopted resolution 53/102 of 8 December 1998, in which it took note of the report of the International Law Commission on the work of its fiftieth session.

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7. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW[129]

(*a*) Thirty-first session of the Commission[130]

The United Nations Commission on International Trade Law held its thirty-first session in New York from 1 to 12 June 1998, and adopted its report on 12 June 1998.

During the session, the Commission considered the legislative guide on privately financed infrastructure projects, and agreed that the possible need for a working group should be considered at the thirty-second session of the Commission. It also was agreed that it was desirable to allow the Secretariat to proceed in the preparation of future chapters for submission to the next session of the Commission and that such preparation, as well as the revision of existing drafts, should be carried out with the assistance of outside experts.

In connection with the draft uniform rules on electronic signatures, the Commission had before it the report of the Working Group on its thirty-second session.[131]

With respect to the topic of "Assignment in receivables financing", the Commission had before it the reports of the twenty-seventh and twenty-eighth sessions of the Working Group,[132] and the submission of a draft convention for adoption by the Commission was expected at the thirty-second session of the Commission.

In connection with the theme "Monitoring the implementation of the 1958 New York Convention",[133] the Commission held a special commemorative New York Convention Day on 10 June 1998 to celebrate the fortieth anniversary of the Convention.

With regard to the topic of case law on UNCITRAL texts (CLOUT), the Commission noted that, since its thirtieth session in 1997, five additional sets of abstracts[134] with court decisions and arbitral awards relating to the United Nations Convention on Contracts for the International Sale of Goods[135] and to the UNCITRAL Model Law on International Commercial Arbitration[136] had been published. The Commission also noted that a search engine had been placed on the web site of the UNCITRAL secretariat on the Internet[137] to enable users of case law on UNCITRAL texts (CLOUT) to carry out searches into CLOUT cases and other documents.

(*b*) Consideration by the General Assembly

At its fifty-third session, the General Assembly, on the recommendation of the Sixth Committee, adopted resolution 53/103 of 8 December 1998, in which it took note of the report of the Commission on the work of its thirty-first session,[138] and commended the Commission for the progress made in its work on receivables financing, electronic commerce, privately financed infrastructure projects and the legislative implementation of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).[139]

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

In addition to the resolutions regarding the International Law Commission and international trade law matters, dealt with separately in the above sections, the Sixth Committee also considered additional items and submitted its recommendations thereon to the General Assembly at its fifty-third session. The Assembly subsequently adopted, on 8 December 1998, the following resolutions.

(*a*) Status of the Protocols Additional to the Geneva Convention of 1949 and relating to the protection of victims of armed conflicts[140]

The General Assembly, in its resolution 53/96, welcomed the holding in January 1998 of the first periodic meeting on the application of international humanitarian law, and noted the holding in October 1998 of the meeting of experts on general problems of the implementation of the fourth Geneva Convention.

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

The General Assembly, in its resolution 53/97, took note of the reports of the Secretary-General.[141]

(*c*) Convention on jurisdictional immunities of States and their property

The General Assembly, in its resolution 53/98, having considered the report of the Secretary-General,[142] decided to establish at its fifty-fourth session an open-ended working group of the Sixth Committee, open also to participation by States members of the specialized agencies, to consider outstanding substantive issues related to the draft articles on jurisdictional immunities of States and their property adopted by the International Law Commission.[143]

(*d*) Action dedicated to the 1999 centennial of the first International Peace Conference and to the closing of the United Nations Decade of International Law

The General Assembly, in its resolution 53/99, bearing in mind the progress report[144] and the agenda[145] of the commemorative meetings to be held at The Hague and at St. Petersburg, welcomed the progress made in the realization of the programme of action, presented by the Governments of the Netherlands and the Russian Federation,[146] which aimed at contributing to the further development of the themes of the first and the second International Peace Conference and could be regarded as a third international peace conference.

(*e*) United Nations Decade of International Law

The General Assembly, in its resolution 53/100, having considered the note by the Secretary-General,[147] expressed its appreciation to States and international organizations and institutions that had undertaken activities, including sponsoring

conferences on various subjects of international law, in implementation of the programme for the activities for the final term (1997-1999) of the Decade, and authorized the Secretary-General to deposit, on behalf of the United Nations, an act of formal confirmation of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations,[148] as provided for in article 83 of the Convention.

(*f*) Principles and guidelines for international negotiations

The General Assembly, in its resolution 53/101, reaffirmed the following principles of international law which are of relevance to international negotiations:

(*a*) Sovereign equality of all States, notwithstanding differences of an economic, social, political or other nature;

(*b*) States have the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter of the United Nations;

(*c*) States have the duty to fulfil in good faith their obligations under international law;

(*d*) States have the duty to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

(*e*) Any agreement is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter;

(*f*) States have the duty to cooperate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international cooperation free from discrimination based on such differences;

(*g*) States shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

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

The General Assembly, in its resolution 53/104, endorsed the recommendations and conclusions of the Committee on Relations with the Host Country as contained in paragraph 50 of its report,[149] and endorsed the recommendation of the Committee that its membership be increased by four members, including one each from African, Asian, Latin American and Caribbean, and Eastern European States.

(*h*) Establishment of an international criminal court

In 1994, the International Law Commission submitted its draft statute for an international criminal court to the General Assembly, whereupon the Assembly established the Ad Hoc Committee on the Establishment of an International Criminal Court, which met twice in 1995. Following its consideration of the report of the Ad Hoc Committee, the General Assembly created the Preparatory Committee for the Establishment of an International Criminal Court to prepare a consolidated draft text for submission to a diplomatic conference. The Preparatory Committee, which met

from 1996 to 1998, held its final session in March and April 1998 and completed the elaboration of the text of the draft Statute. At its fifty-second session, the Assembly, by its resolution 52/160 of 15 December 1997, decided to convene the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, which was subsequently held in Rome from 15 June to 17 July 1998, where the Statute was adopted.

The General Assembly, in its resolution 53/105, acknowledged the historic significance of the adoption of the Rome Statute of the International Criminal Court,[150] and requested the Secretary-General to convene the Preparatory Commission for the International Criminal Court, in accordance with resolution F adopted by the Conference,[151] from 16 to 26 February, 26 July to 13 August and 29 November to 17 December 1999, to carry out the mandate of that resolution and, in that connection, to discuss ways to enhance the effectiveness and acceptance of the Court.

(*i*) 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, in its resolution 53/106, took note of the report of the Special Committee[152] and welcomed the report of the Secretary-General on the results of the ad hoc expert group meeting convened in accordance with General Assembly resolution 52/162.[153]

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

The General Assembly, by its resolution 53/107, renewed its invitation to the Security Council to consider the establishment of further mechanisms or procedures, as appropriate, for consultations as early as possible under Article 50 of the Charter of the United Nations with third States, which are or may be confronted with special economic problems arising from the carrying out of preventive or enforcement measures imposed by the Council under Chapter VII of the Charter, with regard to a solution of those problems, including appropriate ways and means for increasing the effectiveness of its methods and procedures applied in the consideration of requests by the affected States for assistance. By the same resolution, the Assembly also requested the Secretary-General to seek the views of States, the organizations of the United Nations system, international financial institutions and other international organizations regarding the report of the ad hoc expert group meeting on developing a methodology for assessing the consequences incurred by third States as a result of preventive or enforcement measures and on exploring innovative and practical measures of international assistance to the affected third States.[154] The Assembly further requested the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, at its session in 1999, to continue to consider on a priority basis the question of the implementation of the provisions of the Charter related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter.

(*k*) Measures to eliminate international terrorism

The General Assembly, in its resolution 53/108, having examined the report of the Secretary-General,[155] strongly condemned all acts, methods and practices of ter-

rorism as criminal and unjustifiable, wherever and by whomsoever committed, and reiterated its call upon all States to adopt further measures in accordance with the relevant provisions of international law, including international standards of human rights, to prevent terrorism and to strengthen international cooperation in combating terrorism and, to that end, to consider in particular the implementation of the measures set out in paragraphs 3 (*a*) to (*f*) of its resolution 51/210 of 17 December 1996.

(*l*) Review of the statute of the United Nations Administrative Tribunal

The General Assembly, by its decision 53/430 of 8 December 1998, decided to include in the provisional agenda of its fifty-fourth session the item entitled "Review of the statute of the United Nations Administrative Tribunal".

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9. UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH[156]

During the reporting period, UNITAR continued to conduct its Training Programme in Multilateral Diplomacy and International Affairs Management, designed for junior, mid-level and senior-level diplomats, diplomatic trainees, government officials from specialized ministries, academics and representatives of intergovernmental organizations. Under the programme, training was provided in the specific areas of diplomacy; peacemaking and preventive diplomacy; environmental law; international migration; and peacekeeping operations. UNITAR also provided training in the field of economic and social development, including the legal aspects of debt and financial management for sub-Saharan Africa and Viet Nam.

Consideration by the General Assembly

At its fifty-third session, the General Assembly, on the recommendation of the Second Committee, adopted resolution 53/195 of 15 December 1998, in which it reaffirmed the importance of a coordinated United Nations system-wide approach to research and training and underlined the need for United Nations training and research institutions to avoid duplication in their work, and noted the survey prepared by UNITAR of training institutes and training programmes within the United Nations.[157]

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

1. INTERNATIONAL LABOUR ORGANIZATION

1. The International Labour Conference (ILC), which held its 86th session in Geneva from 2 to 18 June 1998, adopted the Declaration on Fundamental Principles and Rights at Work and its Follow-up.[158]

2. At the same session, the Conference also adopted Recommendation No. 189 concerning general conditions to stimulate job creation in small and medium-sized enterprises.[159]

3. The Conference furthermore decided to amend article II, paragraph 5, of the Statute of the Administrative Tribunal of the International Labour Organization as follows:[160]

> "5. The Tribunal shall also be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations of any other international organization meeting the standards set out in the annex hereto which has addressed to the Director-General a declaration recognizing, in accordance with its Constitution or internal administrative rules, the jurisdiction of the Tribunal for this purpose, as well as its Rules of Procedure, and which is approved by the Governing Body."

and to replace the introductory paragraph of the Annex to the said Statute by the following paragraphs:

> "To be entitled to recognize the jurisdiction of the Tribunal in accordance with paragraph 5 of article II of the Statute, an international organization must either be intergovernmental in character, or fulfil the following conditions:
>
> "(*a*) It shall be clearly international in character, having regard to its membership, structure and scope of activity;
>
> "(*b*) It shall not be required to apply any national law in its relations with its officials, and shall enjoy immunity from legal process as evidenced by a headquarters agreement concluded with the host country; and
>
> "(*c*) It shall be endowed with functions of a permanent nature at the international level and offer, in the opinion of the Governing Body, sufficient guarantees as to its institutional capacity to carry out such functions as well as guarantees of compliance with the Tribunal's judgements.
>
> "The Statute of the Administrative Tribunal of the International Labour Organization applies in its entirety to such international organizations subject to the following provisions which, in cases affecting any one of these organizations, are applicable as follows":
>
> "..."

4. The Conference also decided to amend the additional terms of reference governing external audit as set out in the appendix to the Financial Regulations by replacing paragraph 5 of that appendix by the following text:[161]

> "5. The external auditor shall express and sign an opinion on the financial statements of the Organization. The opinion shall include the following basic elements:
>
> "(*a*) The identification of the financial statements audited;
>
> "(*b*) A reference to the responsibility of the entity's management and the responsibility of the auditor;
>
> "(*c*) A reference to the audit standards followed;
>
> "(*d*) A description of the work performed;
>
> "(*e*) An expression of opinion on the financial statements as to whether:
>
> — The financial statements present fairly the financial position as at the end of the period and the results of the operations for the period;
>
> — The financial statements were prepared in accordance with the stated accounting policies; and

—The accounting policies were applied on a basis consistent with that of the preceding financial period;

"(*f*) An expression of opinion on the compliance of transactions with the Financial Regulations and legislative authority;

"(*g*) The date of the opinion;

"(*h*) The external auditor's name and position; and

"(*i*) Should it be necessary, a reference to the report of the external auditor on the financial statements."

5. The Committee of Experts on the Application of Conventions and Recommendations met in Geneva from 26 November to 11 December 1998 to adopt its report to the 87th Session of the International Labour Conference (1999).[162]

6. Representations were lodged under article 24 of the Constitution of the International Labour Organization alleging non-observance by Chile of the Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35), and the Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37);[163] by Bolivia of the Indigenous and Tribal Peoples Convention, 1989 (No. 169);[164] by Denmark of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98);[165] by Bosnia and Herzegovina of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111);[166] by Chile of the Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35), the Old-Age (Agriculture) Convention, 1933 (No. 36), the Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37), and the Invalidity Insurance Convention, 1933 (No. 38);[167] by Ethiopia of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Termination of Employment Convention, 1982 (No. 158);[168] and by Mexico of the Indigenous and Tribal Peoples Convention, 1989 (No. 169).[169]

7. The Governing Body of the International Labour Office, at its 273rd session (November 1998), examined the report of the Commission of Enquiry established to examine the complaint lodged under article 26 of the Constitution of the International Labour Organization alleging non-observance by Myanmar of the Forced Labour Convention, 1930 (No. 29)[170] It also examined the complaint, lodged under article 26 of the Constitution of ILO, by several delegates to the 86th Session of the International Labour Conference, alleging non-observance by Colombia of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).[171]

8. The Governing Body considered and adopted the following reports of its Committee on Freedom of Association: the 309th report (271st session, March 1998);[172] the 310th report (272nd session, June 1998);[173] and the 311th and 312th reports (273rd session, November 1998).[174]

9. The Working Party on the Social Dimensions of the Liberalization of International Trade, established by the Governing Body, held two meetings in 1998, during the 271st (March 1998)[175] and 273rd (November 1998)[176] sessions of the Governing Body.

10. The Working Party on Policy regarding the Revision of Standards of the Committee on Legal Issues and International Labour Standards of the Governing Body held meetings in 1998 during the 271st (March 1998)[177] and 273rd (November 1998)[178] sessions of the Governing Body.

2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

(*a*) Activities connected with international meetings

— Workshop on the Development and Harmonization of Environmental Law on Selected Topics in East Africa, Kisumu, Kenya (2-10 February 1998).

— "Towards Policies for Conservation and Sustainable Use of Aquatic Genetic Resources: A Think Tank". Rockefeller Foundation. Bellagio Study and Conference Centre (Bellagio, Como, Italy, 14-18 April 1998). Paper: "Developments in the Legal Regimes Governing Aquatic Genetic Resources" (Cristina Lería).

— Meeting on Policy, Legal and Institutional Approaches to Sustainable Water Resources Management (Rome, 28-30 April 1998).

— Ad hoc expert meeting on indicators and criteria of sustainable shrimp culture (Rome, 28-30 April 1998).

— International Workshop on Community-based Natural Resources Management. World Bank (Washington, D.C., 10-14 May 1998).

— General Fisheries Commission for the Mediterranean (GFCM), twenty-third session (FAO headquarters, Rome, 7-10 July 1998).

— International Workshop on Leasing of Publicly Owned Forests: Learning from International Experiences (22-28 August 1998).

— Fishery Committee for the Eastern Central Atlantic (CECAF), fourteenth session (Nouakchott, 6-9 September 1998).

— Asia-Pacific Fishery Commission (APFIC), twenty-sixth session (Beijing, 24-30 September 1998).

— Seminar on Vegetable Quality Control (Dakar, 1-3 November 1998).

— International Conference on "Prospects for the Law of the Sea at the Threshold of the Twenty-first Century (Rome, Italo-Latin American Institute, 12 and 13 November 1998). Paper: "Brief Analysis of International Fisheries Instruments and the Role of FAO" (C. Lería).

— International Seminar on Decentralization and Devolution of Forest Management (Davao, Philippines, 30 November–4 December 1998).

(*b*) Legislative matters

(i) *Agrarian legislation*

Burkina Faso, Haiti, Kyrgyzstan, Mali, Niger, Swaziland.

(ii) *Water legislation*

Dominica, Estonia, Lao People's Democratic Republic, Niger, South Africa, Saint Lucia, Uganda, United Republic of Tanzania.

(iii) *Animal health and production legislation*

Note: No entries under this category.

(iv) *Plant protection legislation, including pesticides control*

Belize, Gambia, Georgia.

(v) *Plant production and seed legislation*

Ecuador, Namibia, Suriname.

(vi) *Food legislation*

Armenia, Bolivia, Morocco.

(vii) *Fisheries legislation*

Burkina Faso, Dominican Republic, Ethiopia, Gabon, Malaysia, Palestine, Sudan, Tonga.

(viii) *Forestry and wildlife legislation*

Benin, China, Madagascar, Mongolia, Morocco, Myanmar, Niger, Romania, United Republic of Tanzania, Viet Nam.

(ix) *Environment legislation*

United Republic of Tanzania.

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3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

(*a*) International regulations

(i) *Entry into force of instruments previously adopted*

Within the period covered by this review, no multilateral conventions or agreements adopted under the auspices of UNESCO entered into force.

(ii) *Proposal concerning the preparation of new instruments*

During 1998, preparatory work was undertaken on a draft Convention concerning the Protection of the Underwater Cultural Heritage and on a draft Recommendation on the Promotion and Use of Multilingualism and Universal Access to Cyberspace. The adoption of these two new instruments was included as items in the provisional agenda of the thirtieth session of the General Conference (October-November 1999).

(*b*) Human rights

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

The Committee on Conventions and Recommendations met in private session at UNESCO headquarters from 21 to 23 April 1998 and on 12, 13 and 15 October 1998 to examine communications which had been transmitted to it in accordance with Executive Board decision 104 EX/3.3.

At its April session, the Committee examined 27 communications, of which 20 were examined with a view to determining their admissibility or otherwise and 2 were examined as regards their substance, and 5 were examined for the first time. Of

the communications, 2 were declared inadmissible and 6 were struck from the list because they were considered as having been settled or did not, upon examination of the merits, appear to warrant further action. The examination of 19 was suspended. The Committee presented its report to the Executive Board at its 154th session.

At its October session, the Committee examined 22 communications, of which 14 were examined with a view to determining their admissibility or otherwise and 5 were examined as regards their substance, and 3 were examined for the first time. Of the communications examined, one was declared inadmissible and 4 were struck from the list because they were considered as having been settled or did not, upon examination of the merits, appear to warrant further action. The examination of 17 was suspended. The Committee presented its report to the Executive Board at its 155th session.

(*c*) Copyright activities

As a follow-up action recommended by the World Congress on Education and Information in the Field of Copyright (September 1987), UNESCO began the creation of specialized UNESCO Chairs on Copyright to promote the teaching of this matter at the university level, to obtain the preparation, on a regular basis, of national qualified specialists to work in all the infrastructures concerned with creativity, copyright and cultural industries. In 1998, such chairs were created at the University of Alicante, Spain, the University of Tunis and the International Institute on Law and Economy in Moscow.

To examine the legal problems raised by the digital technology, UNESCO convened a meeting of the Committee of European Experts on Communication and Copyright in the Information Society (INFORIGHT) in Monte Carlo from 9 to 13 March 1998.

To explore the copyright problems raised by the transmission of intellectual works through electronic networks, the following articles, written by well-known specialists, were published in 1998 in the UNESCO *Copyright Bulletin*:

— "Intellectual property and global information infrastructure", by Prof. A. Lucas (France) (issue No. 1, 1998);

— "Copyright's 'digital columns'", by Prof. P.-Y. Gauthier (France) (issue No. 3, 1998);

— "Report and the conclusions reached by the Committee of European Experts on Communication and Copyright in the Information Society (held 9-13 March 1998 in Monaco)" (issue No. 3, 1998);

— "Cyberspace as an area of law", by Prof. M. Fedotov (Russian Federation) (issue No. 4, 1998);

— "The need for shared liability on the Internet", by R. Oman (United States) (issue No. 4, 1998);

— "Librarians: a special care for treatment", by Sandy Norman (United Kingdom) (issue No. 4, 1998).

4. WORLD BANK

(*a*) IBRD, IFC and IDA membership

During 1998, Chad became a member of IFC.

(*b*) World Bank inspection panel

Requests submitted to the Panel in 1998

Request No. 12. Lesotho/South Africa: Lesotho-proposed loan for phase 1B of Highlands Water Project.

Request No. 13. Nigeria/Lagos Drainage and Sanitation Project.

(*c*) Multilateral Investment Guarantee Agency

Signatories and members

The Convention Establishing the Multilateral Investment Guarantee Agency (MIGA) was opened for signature to member countries of the World Bank and Switzerland in October 1985. As of December 1998, the Convention had been signed by 164 countries, of which 146 were full members. During 1998, requirements for membership were completed by Burundi, Iceland and Latvia.

General capital increase

At the conclusion of the Development Committee Meeting in Hong Kong SAR on 22 September 1997, the Committee announced that a consensus had been reached on the funding of additional capital for MIGA. The Ministers recommended a three-part US$ l billion funding package comprising an IBRD grant of $150 million, paid-in capital of $150 million, plus $700 million of callable capital. The Ministers expressed their view that the package would relieve the operating constraints on MIGA and would permit the Agency, in the medium to long term, to support further expansion of its guarantee activities. On 31 March 1998, the MIGA Board of Directors approved a report on the 1998 General Capital Increase (GCI) and the transmittal of their recommendation and a draft resolution to the Council of Governors. The resolution would increase the authorized capital stock of MIGA by SDR 785,590 ($850,008,380 equivalent), divided into 78.5999 shares, each having a par value of SDR 10,000. Voting by Governors on the GCI commenced on 1 April 1998 and would close on 5 April 1999.

Guarantee operations

MIGA issues investment guarantees (insurance) to eligible foreign investors in its developing member countries against the political (i.e., non-commercial) risks of expropriation, transfer restriction, breach of contract, and war and civil disturbance. MIGA had issued 366 contracts of guarantee, totalling $4.4 billion in maximum contingent liability.[179] Aggregate foreign direct investment facilitated by all MIGA-insured projects is estimated to be more than $24.8 billion.

MIGA-insured projects are in 61 developing countries, namely, Algeria, Angola, Argentina, Azerbaijan, Bahrain, Bangladesh, Bolivia, Brazil, Cameroon, Cape Verde, Chile, China, Colombia, Costa Rica, Czech Republic, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Georgia, Ghana, Guatemala,

Guinea, Guyana, Honduras, Hungary, India, Indonesia, Jamaica, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Madagascar, Mali, Morocco, Mozambique, Nepal, Pakistan, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Romania, Russian Federation, Saudi Arabia, Slovakia, South Africa, Sri Lanka, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, United Republic of Tanzania, Uruguay, Uzbekistan, Venezuela and Viet Nam.

The Agency has insured investors from Argentina, Bahamas, Belgium, Brazil, Canada, Cayman Islands, Finland, France, Germany, Greece, India, Italy, Japan, Luxembourg, Malaysia, the Netherlands, Norway, Portugal, the Republic of Korea, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom, the United States, Uruguay and the Virgin Islands.

Specialized Investment Guarantee Trust Funds

Specialized Investment Guarantee Trust Funds were devised to provide guarantees against major political risks for projects in ineligible territories and countries with the greatest developmental needs. Coincidentally, they offer a venue for a unique type of cooperation among multilateral institutions. MIGA serves as the Administrator of the Trust Funds. Guaranteed projects will follow the broad parameters of the MIGA guarantee programme and will carry the same development mandate as the Agency.

On 27 January 1998, the Board of Directors of the European Investment Bank approved a contribution of 5 million ECU towards the MIGA West Bank and Gaza Investment Guarantee Trust Fund. The Trust Fund was created in 1997 in cooperation with the Palestinian Authority as part of the World Bank Group's efforts to actively support and provide assistance in every way possible, through financing and guarantees to support the reconstruction efforts in the Territories and to promote peace. Eligible investors include companies or nationals of MIGA member countries or of members of multilateral organizations that are sponsors; or Palestinians resident or incorporated in the Territories, provided the assets to be invested are transferred from outside the Territories.

Similarly, the European Union is sponsoring the Investment Guarantee Trust Fund for Bosnia and Herzegovina with a credit line of 10.5 million ECU. Investors from countries members of the Union and some East European countries are eligible for Trust Fund guarantees. Investors from Bosnia and Herzegovina may also be eligible provided the assets to be invested are transferred from outside the host country.

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 favourable than that accorded by the member country concerned to any State or other public entity in an investment protection treaty or any other agreement relating to foreign investment with respect to the rights to which MIGA may succeed as subrogee of a compensated guarantee holder. In 1998, the Agency concluded agreements with Algeria, the Dominican Republic and Ukraine. As of 31 December 1998, 87 such agreements were in force.

In accordance with the directives of article 18(*c*) of the Convention, the Agency also negotiates agreements on the use of local currency. These agreements enable MIGA to dispose of local currency in exchange for freely usable currency acquired

by it in settlement of claims with insured investors. In 1998, the Agency concluded agreements with Burundi, Latvia and Ukraine. As of 31 December 1998, 92 such agreements were in force.

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. In 1997, the Agency concluded agreements with Barbados, Burundi, the Dominican Republic, Latvia and Malaysia. As of 31 December 1998, 95 such agreements were in force.

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

Signatures and ratifications

During 1998, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention)[180] was ratified by two countries: Croatia and the former Yugoslav Republic of Macedonia. There was one new signatory: Namibia. With these new signatures and ratifications, the number of signatory States reached 146 and the number of Contracting States reached 131.

Disputes before the Centre

During 1998, arbitration proceedings under the ICSID Convention were instituted in eight new cases:

Houston Industries Energy, Inc. and others v. *Argentine Republic* (case No. ARB/98/1).

Victor Pey Casado and another v. *Republic of Chile* (case No. ARB/98/2).

International Trust Company of Liberia v. *Republic of Liberia* (case No. ARB/98/3).

Wena Hotels Limited v. *Arab Republic of Egypt* (case No. ARB/98/4).

Eudoro A. Olguín v. *Republic of Paraguay* (case No. ARB/98/5).

Compagnie Minière International Or S.A. v. *Republic of Peru* (case No. ARB/98/6).

Banro American Resources, Inc. and Société Aurifère du Kivu et du Maniema S.A.R.L. v. *Democratic Republic of the Congo* (case No. ARB/98/7).

Tanzania Electric Supply Company Limited v. *Independent Power Tanzania Limited* (case No. ARB/98/8).

Three arbitration proceedings were instituted under the ICSID Additional Facility Rules:

Joseph C. Lemire v. *Ukraine* (case No. ARB(AF)/98/l).

USA Waste Services, Inc. v. *United Mexican States* (case No. ARB(AF)/98/2).

The Loewen Group, Inc. and Raymond L. Loewen v. *United States of America* (case No. ARB(AF)/98/3).

One proceeding was instituted for the revision of the award—*American Manufacturing & Trading, Inc.* v. *Democratic Republic of the Congo* (case No. ARB/93/1)—and two proceedings—*Fedax N.V.* v. *Republic of Venezuela* (case No.

ARB/96/3) and *WRB Enterprises and Grenada Private Power Limited* v. *Grenada* (case No. ARB/97/5—were closed following the rendition of awards.

As of 31 December 1998, 12 other cases were pending before the Centre:

Tradex Hellas S.A. v. *Republic of Albania* (case No. ARB/94/2).

Antoine Goetz and others v. *Republic of Burundi* (case No. ARB/95/3).

Compañía del Desarrollo de Santa Elena S.A. v. *Republic of Costa Rica* (case No. ARB/96/1).

Misima Mines Pty. Ltd. v. *Independent State of Papua New Guinea* (case No. ARB/96/2).

Metalclad Corporation v. *United Mexican States* (case No. ARB(AF)/97/l).

Société d'Investigation de Recherche et d'Exploitation Minière (SIREXM) v. *Burkina Faso* (case No. ARB/97/1).

Compañía de Aguas del Aconquija S.A. and Compagnie Générale des Eaux v. *Argentine Republic* (case No. ARB/97/3).

Robert Azinian and others v. *United Mexican States* (case No. ARB(AF)/97/2).

Ceskoslovenska obchodni banka, a.s. v. *Slovak Republic* (case No. ARB/97/4).

Lanco International, Inc. v. *Argentine Republic* (case No. ARB/97/6).

Emilio Agustín Maffezini v. *Kingdom of Spain* (case No. ARB/97/7).

Compagnie française pour le développement des fibres textile (CFDT) v. *Republic of Côte d'Ivoire* (case No. ARB/97/8).

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5. INTERNATIONAL MONETARY FUND

(*a*) Membership issues

1. *Accession to membership*

No countries joined the International Monetary Fund in 1998. Accordingly, IMF membership as at 31 December 1998 remained at 182 countries.

2. *Status and obligations under article VIII or article XIV of the IMF Articles of Agreement*

Under article VIII, sections 2, 3 and 4, of the IMF Articles of Agreement, members of IMF may not, without IMF approval: (*a*) impose restrictions on the making of payments and transfers for current international transactions; or (*b*) engage in any discriminatory currency arrangements or multiple currency practices. Notwithstanding these provisions, pursuant to article XIV, section 2, of the Articles of Agreement, a member may notify IMF that it intends to avail itself of the transitional arrangements thereunder and, therefore, may maintain and adapt to changing circumstances the restrictions on payments and transfers for current international transactions that were in effect on the date on which it became a member. Article XIV does not, however, permit a member, after it joins IMF, to introduce new restrictions on the making of payments and transfers for current international transactions without the approval of IMF.

Members that avail themselves of the transitional arrangements of article XIV, section 2, consult with IMF annually on the restrictions maintained thereunder. IMF generally encourages such members to remove those restrictions and to formally accept the obligations of article VIII, sections 2, 3 and 4. Where necessary, and if requested by a member, IMF also provides technical assistance to help the member remove those restrictions.

In 1998, the following four countries formally accepted the obligations of article VIII, sections 2, 3 and 4, raising the total number of countries that have accepted those obligations (as at 31 December 1998) to 147: Bulgaria, Romania, Rwanda and the former Yugoslav Republic of Macedonia.

3. *Overdue financial obligations to the Fund*

As at 31 December 1998, there were seven countries (six members—Afghanistan, the Democratic Republic of the Congo, Iraq, Liberia, Somalia and Sudan—plus the Federal Republic of Yugoslavia (Serbia and Montenegro)) that were in protracted arrears (i.e., financial obligations that are overdue by six months or more) to IMF. Article XXVI, section 2(*a*), of the IMF Articles of Agreement provides that if "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". Of the seven countries with protracted arrears, declarations under article XXVI, section 2(*a*), remained in effect in 1998 with respect to the Democratic Republic of the Congo, Liberia, Somalia and Sudan.

4. *Suspension of voting rights and compulsory withdrawal*

a. Democratic Republic of the Congo

The Democratic Republic of the Congo's voting and related rights were suspended effective 2 June 1994 in accordance with article XXVI, section 2(*b*), of the IMF Articles of Agreement; the suspension remained in place throughout 1998.

b. Sudan

Sudan's voting and related rights were suspended effective 9 August 1993. Subsequently, on 8 April 1994, the Managing Director issued a complaint under rule K-l, thereby initiating the procedure for compulsory withdrawal of Sudan from IMF. On 27 February 1998, the Fund conducted a review of the complaint. Based on Sudan's payment record and generally satisfactory implementation of a staff-monitored adjustment programme for 1997, and the adoption by Sudan of a strengthened programme for 1998, IMF decided not to proceed on the complaint at that time, provided that Sudan maintained its satisfactory performance with regard to payments and economic policies. The Fund also decided to review the complaint for compulsory withdrawal by 27 February 1999 or at the conclusion of the 1998 article IV consultation, whichever occurred earlier. On 6 August 1998, the Fund also reviewed Sudan's economic performance and payments record to the IMF under the 1998 staff-monitored programme and found them to be generally satisfactory.

(*b*) Issues pertaining to representation at the Fund

1. *Afghanistan*

Afghanistan has overdue financial obligations to IMF, a matter which was last discussed by the IMF Executive Board on 13 March 1996. Since then, in view of

the highly unsettled political situation in Afghanistan, there have been no further Executive Board meetings on this or other matters relating to Afghanistan. In 1998, Afghanistan had no Governor or Alternate Governor and was not represented at the Annual Meetings.

2. *Democratic Republic of the Congo*

As a consequence of the suspension of the Democratic Republic of the Congo's voting and related rights (discussed above), the Governor and the Alternate Governor for IMF appointed by the Democratic Republic of the Congo ceased to hold office pursuant to paragraph 3(*a*) of Schedule L of the IMF Articles of Agreement. Accordingly, the Democratic Republic of the Congo was not represented at the 1998 Annual Meetings.

3. *Somalia*

In 1992, IMF found that there was no effective government for Somalia with which it could carry on its activities, and the review of Somalia's overdue financial obligations to IMF was postponed to a date to be determined by the Managing Director, when in his judgement there would once again be a basis for evaluating Somalia's economic and financial situation and the stance of its economic policies. No such review was conducted in 1998. Somalia had no Governor or Alternate Governor in 1998 and was not represented at the 1998 Annual Meetings.

4. *Sudan*

Sudan's voting and related rights were suspended effective 9 August 1993, as discussed above. As with the Democratic Republic of the Congo, the Governor and the Alternate Governor for IMF appointed by the Sudan ceased to hold office as a result of the suspension. Accordingly, Sudan was not represented at the 1998 Annual Meetings. Sudan was not within a constituency of an Executive Director in 1998.

(*c*) Enhanced Structural Adjustment Facility (ESAF) Trust—Amendments to the Instrument

In August 1998, IMF endorsed new operational procedures for closer monitoring of ESAF-supported programmes in order to strengthen the link between financing and adjustment. In principle, disbursements, performance criteria and reviews would henceforth be on a semi-annual basis. In exceptional cases, the proposals called for the possibility of quarterly performance criteria, reviews and disbursements. The decision to amend the ESAF Instrument was approved in November 1998. The amendments provided for, among other things, a single three-year arrangement instead of the previous combination of a three-year arrangement and three separate annual arrangements and for the closer monitoring referred to above.

(*d*) Trust for Special ESAF Operations for heavily indebted poor countries (HIPC)—Amendments to the Instrument

In September 1998, IMF agreed to extend the deadline for entry into the HIPC Initiative from the end of September 1998 to the end of 2000 and amended the ESAF-HIPC Trust Instrument to allow consideration of a member's performance under programmes supported by emergency assistance for post-conflict countries

as part of the first-stage track record leading up to the decision point. In December 1998, IMF further agreed that a member's eligibility and qualification for HIPC assistance committed at the decision point might be reassessed in cases where problems in policy implementation led to protracted delays in reaching the completion point.

(*e*) IMF New Arrangements to Borrow—entry into force

The New Arrangements to Borrow (NAB) approved by IMF on 27 January 1997 became effective on 17 November 1998. The NAB are a set of credit arrangements between IMF and 25 members and institutions of members designed to provide supplementary resources to IMF to forestall or cope with an impairment of the international monetary system or to deal with an exceptional situation that poses a threat to the stability of that system. The NAB do not replace the existing General Agreements to Borrow (GAB), which remain in force. The total amount of resources available under the NAB and GAB combined will be SDR 34 billion (about US$ 48 billion), double the amount available under the GAB alone. By strengthening the Fund's ability to support the adjustment efforts of its members and to address their balance-of-payments difficulties, the NAB are an important element of the Fund's capacity to respond to potential systemic problems. The NAB decision will be in effect for five years from 17 November 1998, and the arrangements may be renewed.

(*f*) Increase in quotas of members—Eleventh General Review of Quotas

Under the Eleventh General Review of Quotas, the IMF Board of Governors approved on 30 January 1998 (resolution 53-2) an increase of 45 per cent in total IMF quotas to approximately SDR 212 billion (about $288 billion) from SDR 146 billion (about $199 billion). The adoption of the resolution required an 85 per cent majority of the total voting power of the IMF membership. Members had to consent to the increase in their respective quotas before 29 January 1999.

(*g*) European Monetary Union

1. *Legal and operational aspects for the Fund*

In September 1998, the IMF Executive Board discussed the operational and legal aspects of the European Monetary Union (EMU) for IMF. The Executive Directors agreed that the transfer of monetary policy powers by members of the euro area to EMU institutions would not affect those members' legal relationship with IMF under the Articles of Agreement, as IMF is a country-based institution. Euro-area members would remain members of IMF in their own individual capacity as countries. With regard to operational aspects of EMU for IMF surveillance under article IV of the IMF Articles of Agreement, the Directors noted that EMU, and particularly the adoption of a single monetary policy under the responsibility of an independent European Central Bank, had important implications for IMF surveillance. As economic policies of the euro area would have important effects on other countries, the Directors agreed that the Fund's responsibility to conduct surveillance over members' external and exchange rate policies required intensifying discussions with the European Union and euro-area institutions, especially the European Central Bank.

The Directors agreed that while article IV consultations with euro-area members would proceed as usual on an individual country basis, the consultations could not be completed without discussion of such core policies as monetary and exchange rate policies that fall within the mandate of the European Central Bank. It was decided, therefore, that discussions with the representatives of the relevant institutions of the European Union—the European Central Bank, and also the Council of Ministers and the Economic and Financial Committee, especially on matters related to the policy mix and exchange rate—would need to take place as part of article IV consultations with individual euro-area countries.

2. *Incorporation of the euro in the SDR basket*

In September 1998, IMF decided that, after the launch of EMU on 1 January 1999, the euro would replace the current currency amounts of the Deutsche mark and the French franc in the SDR valuation basket, which also includes the currencies of Japan, the United Kingdom and the United States. The specific amounts of euro in the valuation basket which would replace the Deutsche mark and the French franc would be announced by IMF promptly following the announcement of the conversion rates between the euro and the Deutsche mark and the French franc by the European Council. The financial instruments in the SDR interest rate basket—the market yield of three-month treasury bills for France, the United Kingdom and the United States, the three-month interbank deposit rate for Germany and the three-month rate on certificates of deposit in Japan—would remain unchanged, although the French and German instruments will be expressed in euros. Subsequently, IMF replaced the currency amounts of Deutsche marks and French francs in the SDR valuation basket with equivalent amounts of euros, based on the fixed conversion rates between the euro and the Deutsche mark and the French franc announced on 31 December 1998 by the European Council.

3. *Designation of the euro as "freely usable" currency*

On 17 December 1998, IMF determined the euro to be a "freely usable" currency effective 1 January 1999. The decision in effect replaced the Deutsche mark and the French franc with the euro on the list of freely usable currencies. Pursuant to the decision, effective 1 January 1999, the euro would join the Japanese yen, the pound sterling and the United States dollar as the currencies determined by IMF to be "freely usable".[181]

4. *Observer status for the European Central Bank*

On 22 December 1998, IMF granted observer status to the European Central Bank, effective 1 January 1999. Under a decision of the Executive Board, the Bank will be invited to send a representative to Executive Board meetings on: IMF surveillance under article IV over the common monetary and exchange rate policies of the euro area; IMF surveillance under article IV over the policies of individual euro-area members; the role of the euro in the international monetary system; the world economic outlook; international capital market reports; and world economic and market developments. In addition, the Bank will be invited to send a representative to Executive Board meetings on agenda items recognized by the Bank and the Fund to be of mutual interest for the performance of their mandates.

6. INTERNATIONAL CIVIL AVIATION ORGANIZATION

(*a*) Membership

During 1998, membership of the organization remained unchanged at 185 States.

(*b*) Conventions/Agreements

On 21 June 1998, the Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March 1991, entered into force, having been ratified, accepted, approved or acceded to by 35 States.

On 1 October 1998, the Protocol of Amendment inserting article 3 bis (Non-use of weapons against civil aircraft in flight) into the Convention on International Civil Aviation entered into force, having reached 102 ratifications.

The Protocol on the Authentic Six-Language Text of the Convention on International Civil Aviation (Chicago, 1944) was signed at Montreal on 1 October 1998, as was its related Protocol of amendment to the Chicago Convention (Final Clause).

(*c*) Other major legal developments

(i) *Legal meetings*

The Panel of Legal and Technical Experts on the Establishment of a Legal Framework with regard to the Global Navigation Satellite System (GNSS) held its third meeting from 9 to 13 February, while its Working Group II also held a third meeting from 9 to 11 February. The Special Group on the Modernization and Consolidation of the Warsaw System met from 14 to 18 April in Montreal. A regional legal seminar on air law, attended by States from Central and Eastern Europe, was held in Paris from 27 to 30 April. The International Conference on the Authentic Chinese Text of the Convention on International Civil Aviation was held in Montreal from 28 September to 1 October.

(ii) *Work programme of the Legal Committee*

The general work programme of the Legal Committee, as decided by the Council on 27 November 1998, comprised the following subjects in the order of priority indicated:

(1) Consideration, with regard to communications, navigation and surveillance/air traffic management (CNS/ATM) systems including global navigation satellite systems (GNSS), of the establishment of a legal framework;

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

(3) Acts or offences of concern to the international aviation community and not covered by existing air law instruments;

(4) International interests in mobile equipment (aircraft equipment);

(5) 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 item (1), the 32nd session of the Assembly adopted in the form of resolution A32-19 the Charter on the Rights and Obligations of States Relating to GNSS Services. Pursuant to resolution A32-20, further work on the long-term legal framework for CNS/ATM systems will begin with a Secretariat Study Group on Legal Aspects of CNS/ATM systems, which will hold its first meeting in April 1999.

Regarding item (2), having reviewed the results of the Special Group on the Modernization and Consolidation of the Warsaw System which had refined the text approved by the 30th session of the Legal Committee, the Council, during its 154th session, decided to convene a Diplomatic Conference from 10 to 28 May 1999 for the adoption of the draft instrument.

Regarding item (3), a Secretariat Study Group on Unruly Passengers was established in December 1998 and will meet in early 1999.

Regarding item (4), the Chairman of the Legal Committee established a Subcommittee which, as approved by the Council during its 155th session, will meet jointly with a committee of governmental experts of the International Institute for the Unification of Private Law (Unidroit) in Rome from 1 to 12 February 1999.

Regarding item (5), the Council, during the 6th meeting of its 153rd session on 4 March, considered certain implications for civil aviation of the draft General Provisions on Ships Routeing for the adoption, designation and substitution of archipelagic sea lanes, to be discussed by the 69th session of the Maritime Safety Committee (MSC) of the International Maritime Organization. As these draft provisions called into question the jurisdiction of ICAO with respect to international air traffic services (ATS) routes, the Council decided that ICAO should participate in MSC 69 and raise the organization's concerns regarding the safety of international air navigation. MSC 69 eventually adopted amendments to the provisions which, inter alia, recognized the exclusive jurisdiction of ICAO with respect to international ATS routes.

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7. UNIVERSAL POSTAL UNION

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

There was no modification to the Convention regulating the current legal status and the privileges and immunities of UPU.

As regards the Convention on the Privileges and Immunities of the Specialized Agencies adopted by the General Assembly of the United Nations, the number of member countries which grant to UPU, representatives of the member countries, the staff and experts of the Universal Postal Union International Bureau the privileges and immunities resulting from the said Convention still stands at 96 countries.

(*b*) General review of the legislative activities of the Universal Postal Union

The Council of Administration approved the results of the study concerning the recasting of the Acts. The draft Universal Postal Convention, to be submitted to the 22nd UPU Congress (Beijing, 23 August–15 September 1999), embodies the Letter

Post Regulations and the Postal Parcel Regulations and the provisions concerning the letter-post and postal parcel services. These Acts shall be binding on all member countries. The draft Convention contains only those provisions that are mainly intergovernmental in nature or which are so fundamental in nature that they require Congress approval. If the 1999 Beijing Congress were to approve the proposal of the Council, the draft Convention would replace the existing Universal Postal Convention and the Postal Parcel Agreement at the same time.

The Council of Administration also undertook a study on the recasting of the Acts regarding the postal financial services in cooperation with the Postal Operations Council. The work related to the agreements concerning the postal financial services and their regulations. This agreement would replace the three Acts, namely, the Money Order Agreement, the Giro Agreement and the Cash on Delivery Agreement.

Within the sphere of the recasting of the Acts, certain provisions were transferred from the Convention and from the Agreement concerning the postal financial services to their Regulations. The latter can be rapidly modified by the Postal Operations Council without waiting decision of the Congress, which is the supreme body of the Union and meets every five years. This transfer of legislative power concerns only operational aspects.

The Council of Administration approved the text of the proposal to introduce, at the beginning of the Convention, a new text about the universal postal service. According to the article, postal users have the right to a universal service involving the permanent provision of quality basic postal services at affordable prices. The Union member countries are guarantors of the basic right of all peoples to communication, and it is up to them to define the scope of the corresponding postal services within the framework of their national legislation. The Council also adopted a draft Congress resolution setting out the quality of service standards applicable to the universal postal service.

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8. INTERNATIONAL MARITIME ORGANIZATION

(*a*) Membership of the organization

During 1998, the following countries became members of the International Maritime Organization: Marshall Islands (26 March 1998), Grenada (3 December 1998). As at 31 December 1998, the number of members of IMO was therefore 157. There are also two Associate Members.

(*b*) Review of legal activities of IMO[182]

(i) *Provision of financial security for vessels*

The Legal Committee at its seventy-seventh session (April 1998) and seventy-eighth session (October 1998) continued its considerations concerning international regulations on the provision of financial security for vessels. The Committee considered separately the question of financial security in respect of passenger claims and other claims.

The Committee considered a report of the Correspondence Group containing draft articles to amend the existing regime under the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea. Five main issues related to

the draft articles were discussed, namely, form of insurance, claims to be covered, basis of liability, limits of liability, and the legal status of the contracting performing carriers. The Committee agreed to pursue the option of compulsory liability insurance but agreed that further consideration should be given to the possibility of introducing personal accident insurance either as a supplement or as an alternative to compulsory liability insurance.

While agreeing that death and personal injury claims should be covered, the Committee noted that a final solution regarding the types of claims to be covered depended on the type of insurance which would be finally agreed upon. Most delegations agreed on the need to increase the current limits of liability under the Athens Convention. The Committee also concluded that the basis of liability in the Athens Convention should remain unchanged.

The Correspondence Group was instructed to explore, in close cooperation with the Comité Maritime International and the insurance industry, the possibility of introducing a passenger accident insurance scheme, either as a supplement to or as an alternative to compulsory financial liability insurance for passenger claims. The Committee also requested the coordinator of the Correspondence Group to prepare a draft protocol to be considered at the next session which would focus on the different insurance issues raised in discussions and limits of liability.

In connection with other claims, the Committee considered a draft IMO code or guidelines setting out minimum recommended standards for shipowner responsibilities in respect of maritime claims. There was wide support for the development of a code. Some delegations expressed their view that the adoption of the code would eliminate the need to adopt instruments on compulsory insurance to cover claims such as wreck removal and spills of bunker fuel oil. This view was opposed by other delegations, which held the view that the entry into force of a non-mandatory instrument such as the code did not obviate the need to consider binding international regulations to ensure proper consideration in connection with those types of claims. The Committee decided to continue its deliberations on the basis of an amended version of the draft code, to be submitted at the next session. The item was included as a priority item in the work programme for 1999.

The Committee also noted that the Governing Body of ILO, at its 273rd session (November 1998), would consider a proposal for the establishment of an IMO/ILO ad hoc expert working group to consider the subject of liability and compensation regarding claims for death, personal injury and abandonment of seafarers.

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

The Legal Committee, at its seventy-seventh session in April 1998 and its seventy-eighth session in October 1998, continued its considerations concerning an international regime for liability and compensation for damage caused by oil from ships' bunkers. Alternative texts of articles of a draft free-standing convention or a draft protocol to the Civil Liability Convention were presented. Other submissions regarding possible administrative burden and the advantages and disadvantages of a new international treaty were considered. The Committee focused its deliberations on fundamental issues, namely, the definition of "shipowner"; the form of the instrument; scope of application; the basis, limits and channelling of liability; and administrative burden associated with compulsory insurance.

It was decided to continue work on the basis of a free-standing instrument covering pollution damage only. The Committee agreed to pursue discussions on

the basis of two options regarding the definition of "shipowner" which could be included in the text of the draft convention. The majority of delegations supported a proposal to channel liability to a small group of persons. Some delegations expressed the opinion that only one person, the registered shipowner, should be liable. While most delegations favoured a strict-liability regime, others expressed doubts as to whether this type of liability was appropriate in the case of pollution from ships' bunkers. The introduction of a compulsory insurance regime to cover liability was also proposed. However, questions were raised as to the administrative burden such a regime would involve.

In connection with the subject of limitation of liability, the Committee considered whether the draft Bunkers Convention could either apply the limitation provisions of the 1976 Convention on Limitation of Liability for Maritime Claims (LLMC) as amended by the 1996 LLMC Protocol or insert the limits of the 1996 LLMC Protocol in the draft text. Options regarding exemptions of liability were also considered. The Committee agreed that the delegations sponsoring the elaboration of the draft Bunkers Convention should continue their work on the item taking into consideration the discussions at the current session. The item was included in the work programme for 1999.

(iii) *Draft Convention on Wreck Removal*

The Legal Committee at its seventy-seventh session in April 1998 and its seventy-eighth session in October 1998 considered the report of the Correspondence Group on Wreck Removal. The Committee also considered a submission by CMI containing a report on the law of wreck removal as well as an article-by-article commentary on the draft Convention on Wreck Removal.

The Committee considered the alternatives of either a comprehensive convention or a simpler treaty providing for the extension of national laws on wreck removal beyond the territorial sea. Delegations expressed concerns about such an extension of coastal State jurisdiction. The Committee therefore decided to base its considerations on the proposed comprehensive convention.

Several issues were considered, including definitions; scope of application; financial liability for locating, marking and removing ships and wrecks; rights and obligations to remove hazardous ships and wrecks; time-bar; and evidence of financial security. The features and extent of the definition of hazard were also considered. Most delegations supported the inclusion of environmental risks in the draft Convention. The Committee agreed to include, in square brackets, a new text reflecting the limitation of the geographical scope to the exclusive economic zone. Other aspects considered concerned State liability, provisions on contribution from cargo, the possible inclusion of drifting ships, establishment of a time bar, and a proposal that the draft Convention be without prejudice to the rights and obligations of coastal States under international law.

The Legal Committee concluded that the Correspondence Group should continue its work, taking into account the comments at the current session, and report to the Committee at its next (seventy-ninth) session. The Committee agreed to keep the item on the agenda for 1999.

(iv) *Technical cooperation subprogramme for maritime legislation*

The Legal Committee received information and a progress report on the implementation of the subprogramme for maritime legislation in the Integrated Technical Cooperation Programme from July 1997 to June 1998.

(v) *Work methods and organization of work*

The Committee took note of the request by the IMO Assembly at its twentieth session (November 1997) inviting the Committee to review its guidelines on work methods and organization of work, taking into account considerations raised concerning "compelling need". The Committee agreed to amend its guidelines with respect to an issue transferred to the Committee by another Committee of the organization.

(vi) *Implications of the 1982 United Nations Convention on the Law of the Sea for the International Maritime Organization*

The Legal Committee took note of a new study on the implications for IMO of the entry into force of the United Nations Convention on the Law of the Sea prepared by the IMO Legal Office.[183] The study updates the information contained in the 1987 study on the same subject.[184]

(vii) *Developing principles for charging users the cost of maritime infrastructure*

A proposal was introduced to develop a set of principles which would encourage the establishment of future systems for charging ships for services rendered by coastal States. While some delegations expressed support for the proposal, most delegations expressed reservations, particularly with regard to the rights of freedom of navigation and safe passage. Questions were also raised as to whether such measures would exceed the technical mandate so far exercised by IMO in the adoption of international safety and anti-pollution rules. The Committee concluded that the proposal had not received sufficient support.

(viii) *CLC insurance certificates*

The Committee considered a submission on the acceptance of the validity of 1992 CLC certificates by States parties to the 1969 International Convention on Civil Liability for Oil Pollution Damage (CLC). There was general agreement that a pragmatic solution was urgently needed, bearing in mind that from 16 May 1998, States parties to the 1992 CLC would compulsorily denounce the 1969 CLC. Consequently, States parties to the 1992 CLC would cease to be party to the 1969 CLC. The Committee decided to adopt a recommendation on the matter and to circulate it by means of a circular to all States.

(ix) *Offshore units and structures*

The representative of CMI informed the Committee of the ongoing work of the CMI International Subcommittee on Offshore Units and Structures which has been working in consultation with the International Association of Drilling Contractors and the Exploration and Production (E & P) Forum. The work on a prospective international convention on offshore crafts and structures was concentrating on mobile units, with the possibility of integrating fixed structures into the Convention. The Legal Committee took note of this information.

(*c*) Treaties

During 1998, no new treaties concerning international law were concluded under the auspices of the International Maritime Organization.

(*d*) Amendments to treaties

(i) *1998 amendments to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 1974) (chapters II-I and V)*

The Maritime Safety Committee at its sixty-ninth session (May 1998) adopted by resolution MSC 69(69) amendments to the following chapters of the 1974 SOLAS Convention:

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

Chapter IV: Radio communications;

Chapter VI: Carriage of cargoes;

Chapter VII: Carriage of dangerous goods.

These amendments to the 1974 SOLAS Convention concern: construction and testing of watertight bulk heads etc. in passenger ships and cargo ships; registering Global Maritime Distress and Safety System (GMDSS) entities; testing intervals for emergency position-indicating radio beacons (EPIRBs); position updating requirements; and regulations for the stowage and security of cargoes (other than solid and liquid bulk cargoes).

In accordance with the tacit amendment procedure provided for in article VIII(*b*)(vii)(2) of the Convention, the amendments shall enter into force on 1 July 2000 unless, prior to 1 January 2000, more than one third of Contracting Governments to the Convention, or Contracting Governments the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments.

(ii) *1998 amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (amendments to the Seafarers' Training, Certification and Watchkeeping (STCW) Code)*

These amendments were adopted by a separate expanded session of the Maritime Safety Committee at its seventieth session (December 1998) by resolution MSC.78(70). The amendments deal with cargo handling and stowage at the operational and management levels.

In accordance with the tacit amendments procedure provided for in article XII (*a*) (ix) of the Convention, the amendments shall enter into force on 1 January 2003, provided the amendments are deemed to have been accepted on 1 July 2002.

(iii) *1998 amendments to the Convention on the International Mobile Satellite Organization (Inmarsat), as amended*

The Assembly of Inmarsat adopted amendments to the Convention on 24 April 1998 at its twelfth session in conformity with article 34 of the Convention. The amendments concern the restructuring of Inmarsat.

The conditions for entry into force require acceptance by two thirds of the States parties representing at least two thirds of total investment shares at the time of adoption.

(iv) *1998 amendments to the Operating Agreement on the International Mobile Satellite Organization (Inmarsat), as amended*

On 24 April 1998, the Assembly of Inmarsat confirmed the adoption of amendments to the Operating Agreement which were approved by the Council of Inmarsat

at its seventy-first session in conformity with article XVIII of the Operating Agreement. These amendments concern the restructuring of Inmarsat.

The conditions for entry into force require acceptance by two thirds of signatories holding at least two thirds of total investment shares at the time of adoption.

(v) *1998 amendments to the International Convention on Maritime Search and Rescue, 1979*

The amendments were adopted by the Maritime Safety Committee at its sixty-ninth session on 18 May 1998 by resolution MSC.70(69). The revisions clarify the responsibilities of Governments and put greater emphasis on the regional approach and coordination between maritime and aeronautical search-and-rescue operations. At the time of their adoption, the Maritime Safety Committee determined that they should enter into force on 1 January 2000, unless, prior to 1 July 1999, more than one third of the parties to the Convention had notified their objections to the amendments.

(*e*) Entry into force of instruments and amendments

(i) *Instruments*

During 1997, no IMO instruments entered into force.

(ii) *Amendments*

a. 1994 amendments to the International Convention for the Safety of Life at Sea, 1974 (chapter 11-2, IGC Code).

i. The amendments to chapter 11-2 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, as set out in annex 2 to the resolution (protection of fuel lines, navigation bridge visibility), were met on 1 January 1998 and entered into force on 1 July 1998.

ii. At the same session, the Maritime Safety Committee also adopted by resolution MSC.32(63) amendments to the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code). The conditions for their entry into force were met on 1 January 1998 and the amendments, which deal with lists of chemicals, entered into force on 1 July 1998.

b. 1994 amendments to the International Convention for the Safety of Life at Sea, 1974 (new chapter IX (ISM Code))

The 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, as set out in annex 2 to the resolution (new chapter IX—management for the safe operation of ships (ISM Code)), were met on 1 January 1998 and the amendments entered into force on 1 July 1998.

c. 1996 amendments to the International Convention for the Safety of Life at Sea, 1974, as amended (chapters II-1, III, VI and XI) (enhanced survey guidelines) (IBC Code)

i. The Maritime Safety Committee at its sixty-sixth session (June 1996) adopted by resolution MSC.47(66) amendments to the following chapters of the 1974 SOLAS Convention:

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

Chapter III: Life-saving appliances and arrangements (ISA Code);

Chapter VI: Carriage of cargoes;

Chapter V: Special measures to enhance maritime safety.

The most important are the amendments to chapter III which make mandatory the provisions of the International Life-Saving Appliance (LSA) Code. The Code was adopted by the Maritime Safety Committee at the same session.

In accordance with the tacit amendment procedure, the conditions for entry into force were met on 1 January 1998 and the amendments entered into force on 1 July 1998.

ii. At the same session, the Maritime Safety Committee adopted by resolution MSC.50(66) amendments to the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code).

The conditions for entry into force were met on 1 January 1998 and the amendments entered into force on 1 July 1998.

iii. At the same session, the Maritime Safety Committee adopted by resolution MS.49(66) amendments to the guidelines on the enhanced programme of inspections during surveys of bulk carriers and oil tankers (resolution A.744(18).

The conditions for entry into force were met on 1 January 1998 and the amendments entered into force on 1 July 1998.

d. 1996 amendments to the International Convention on Safety of Life at Sea, 1974, as amended (chapters II-I, II-2, V) (IBC Code) (IGC Code)

i. The Maritime Safety Committee at its sixty-seventh session (December 1996) adopted by resolution MSC.57(67) amendments to the following chapters of the 1974 SOLAS Convention:

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

II-2: Construction—fire protection, fire detection and fire extinction (FTP Code);

V: Safety of navigation.

By virtue of these amendments the provisions of the International Code for Application of Fire Test Procedures (FTP Code) are made mandatory under the 1974 SOLAS Convention. The Maritime Safety Committee at the same session adopted the Code, the text of which is set out in the annex to resolution MSC.61(67).

In accordance with the tacit amendment procedure, the conditions for entry into force were met on 1 January 1998 and the amendments entered into force on 1 July 1998.

ii. At the same session, the Maritime Safety Committee adopted by resolution MSC.58(67) amendments to the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code), dealing with vague expressions.

The conditions for entry into force were met on 1 January 1998, and the amendments entered into force on 1 July 1998.

iii. At the same session, the Maritime Safety Committee adopted by resolution MSC.59(67) amendments to the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code).

The conditions for entry into force were met on 1 January 1998 and the amendments entered into force on 1 July 1998.

e. 1996 amendments to the annex to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78) (Amendments to Protocol I)

i. The amendments were adopted by the Marine Environment Protection Committee at its thirty-eighth session (July 1996) by resolution MEPC.68(38). The amendments concern the requirements for reports to be made concerning incidents involving oil or harmful substances and the conditions requiring reports when an incident involves damage, failure or breakdown of a ship of 15 metres in length or above.

In accordance with the tacit amendments procedure, the amendments were deemed to have been accepted on 1 July 1997, and entered into force on 1 January 1998.

ii. At the same session, the Marine Environment Protection Committee adopted by resolution MEPC.69(38) amendments to the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code).

In accordance with the tacit amendment procedure, the amendments were deemed to have been accepted on 1 January 1998, and entered into force on 1 July 1998.

iii. At the same session, the Marine Environment Protection Committee adopted by resolution MEPC.70(38) amendments to the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (BCH Code).

In accordance with the tacit amendment procedure, the amendments were deemed to have been accepted on 1 January 1998, and entered into force on 1 July 1998.

f. 1997 amendments to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78) (IBC Code)

The Marine Environment Protection Committee at its thirty-ninth session (March 1997) adopted by resolution MEPC.73(39) amendments to the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code). The amendments were adopted to clarify vague expressions in the Code.

The amendments were deemed to have been accepted on 10 January 1998, and entered into force on 10 July 1998.

9. WORLD INTELLECTUAL PROPERTY ORGANIZATION

Introduction

The year 1998 was marked by a vigorous level of WIPO activities in its three main fields of work: cooperation with developing countries in the strengthening of their intellectual property systems (cooperation for development); 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*) Cooperation for development activities and the implementation of the TRIPS Agreement

The main forms in which WIPO provided assistance to developing countries in the fields of industrial property and copyright and neighbouring rights continued to be the development of human resources, the provision of legal advice and technical assistance for the automation of administrative procedures and the retrieval of technological information and the implementation of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS Agreement).

Cooperation with developing and least developed countries for the implementation of the TRIPS Agreement was high on the agenda of the organization in 1998. Sixty-eight nationally focused action plans were executed by WIPO, 8 of which were completed and 24 new ones started, with the bulk of the assistance directed at helping countries prepare for the implementation of the TRIPS Agreement by 1 January 2000. These activities concentrated on modernizing their intellectual property systems and strengthening their operational and human resources capacities in the legislative, administrative and enforcement areas.

In 1998, the Cooperation for Development activities mobilized a total of 160 man-months of expertise and 237 individuals who acted as resource persons in seminars, workshops and other events organized by WIPO in the four regions. Forty-three developing country nationals acted as experts and 147 as resource persons in the implementation of the activities. A total of 119 events designed and organized by WIPO took place in 1998 in the four developing regions, of which 59 were at the national level (for some 6,440 participants), and 60 at the regional and subregional levels (for some 3,550 participants). One of the main achievements was the dissemination of information on the intellectual property system and the promotion of its potential benefits to an enlarged number of target groups and interested circles. A total of 54 national, subregional and regional meetings were organized by WIPO in this respect for the benefit of some 5,320 individuals from governmental and private sectors.

A Least Developed Countries Unit was formed in October 1998. The Unit is mandated to improve the overall capacity of LDCs to respond to intellectual property opportunities created by the rapid globalization of the world economy. Of 48 countries on the United Nations list of least developed countries, 39 are members of WIPO. WIPO has some 44 projects in 38 least developed countries focusing on the specific requirements of the countries concerned and complementing the technical cooperation programmes of other agencies. In close cooperation with the organization's regional bureaux, the LDC Unit designs programmes tailored specifically for individual least developed countries.

(i) *WIPO Worldwide Academy*

The WIPO Worldwide Academy is an institution dedicated to optimizing the use of national intellectual property systems by enhancing human resource development programmes at national and regional levels. The beneficiaries are principally those working in intellectual property offices, academia and research institutions. A key means to achieving the objective on a global basis is through the use of the most advanced technology available. The WIPO Academy has embraced the use of the Internet, digital multimedia technology and videoconferencing to better extend its reach to intellectual property and academic institutions worldwide.

The WIPO Worldwide Academy made significant progress in broadening the range of training beneficiaries among decision makers, policy advisers, development managers, administrators, law enforcement officers and examiners, with the objective of promoting the sharing of information among various intellectual property users as well as right-holders. It also placed greater focus on updating course content and material and on increased use of modern technologies for training purposes, such as multimedia presentations and videoconferencing. These initiatives resulted in improved delivery and greater impact of the training courses, as indicated in the evaluation and feedback of course participants. More advanced and tailor-made training programmes were also developed to suit specific needs of diverse groups of beneficiaries. The number of courses delivered during 1998 also increased. A total of 60 interregional courses and seminars were conducted involving 484 sponsored participants and 161 participants in study visits, and five Academy sessions with the participation of 84 policy-level officials from all regions were held in 1998. In the area of distance learning, the newest in the mandate of the WIPO Worldwide Academy, special emphasis was placed on creating the strategic foundation for distance learning. In this context, and in line with established pedagogical principles, initial actions involved the identification of training needs and target audiences, prior to proceeding to course development.

While some distance learning, especially that on the introductory level, can be managed solely by the Worldwide Academy, more advanced studies require collaboration with academic institutions. Foreseeing that need, the Academy negotiated in 1998 several partnership agreements with institutions such as the University of South Africa, the Queen Mary and Westfield College of the University of London, and Cornell University in the United States. Further collaborations were established with the European Patent Office, the German Patent and Trademark Office, and the British Copyright Council. Agreements were also concluded with the African Intellectual Property Organization and the African Regional Industrial Property Organization to strengthen regional training capacities and to coordinate with other universities in those regions.

(ii) *Cooperation with Certain Countries in Europe and Asia*

The Cooperation with Certain Countries in Europe and Asia programme in 1998 consisted mostly of consultations with government officials, provision of legislative advice and the organization of seminars. The promotion of adherence to WIPO treaties and enhancement of international cooperation in this field largely met WIPO expectations. Considerable progress was made in respect of delivery of assistance aimed at the harmonization of intellectual property legislation with WIPO-administered treaties and the TRIPS Agreement, the enhancement of protection against piracy and counterfeiting, and cooperative activities for the moderni-

zation and strengthening of institutions for the administration and enforcement of intellectual property.

(*b*) Norm-setting activities

One of the principal tasks of WIPO is to promote the harmonization of intellectual property laws, standards and practices among its member States. This is achieved through the progressive development of international approaches in the protection, administration and enforcement of intellectual property rights.

Standing Committees

Accelerating the growth of international common principles and rules governing intellectual property calls for ways and means other than diplomatic conferences and treaties. As a result, three Standing Committees were established, one to deal with copyright matters, one with patent matters and one with matters relating to trademarks, industrial designs and geographical indications. Each committee is designed as a streamlined means by which member States may set priorities, allocate resources and ensure coordination of work.

At their first meeting, each committee authorized the WIPO secretariat to establish an Internet-based electronic forum to facilitate and accelerate discussions among members. Membership of each committee is made up of the WIPO member States and selected intergovernmental organizations and international non-governmental organizations. Each of the three Standing Committees met in one or more sessions in the course of 1998.

a. *Standing Committee on Trademarks*

The Standing Committee dealing with the law of trademarks, industrial designs and geographical indications met in July. The session dealt essentially with organizational and procedural matters. The Committee also reviewed issues pertaining to the protection of well-known marks and other matters to be discussed at its next meeting in early 1999. Priority in future work was given to completing the legal provisions for protecting well-known marks and on questions regarding the use of trademarks on the Internet.

b. *Standing Committee on Copyright and Related Rights*

The Standing Committee dealing with copyright questions met in November. The members discussed the protection of audio-visual performances, databases and the rights of broadcasting organizations. On the first matter, the advisability of an international Protocol to the WIPO Performances and Phonograms Treaty (established in 1996) or of an independent treaty remained open. However, to facilitate further consideration, the WIPO secretariat would collate proposals from the members in preparation for a series of regional consultative meetings to be held before the May 1999 session of the Committee. That session would assess the progress to permit the relevant assemblies of the WIPO member States to decide in September 1999 whether to convene a diplomatic conference for negotiations on a new international legal instrument.

On the protection of databases, the Committee agreed to pursue discussions and a study on the economic impact of such protection on developing countries. Regional consultations were planned for the second quarter of 1999. As for the

protection of the rights of broadcasting organizations, proposals were placed on the agenda for the Committee's May 1999 meeting, with regional consultations to be held in the second quarter of 1999.

c. *Standing Committee on Patents*

The Standing Committee dealing with patent law met in June and November. Discussions focused on the draft Patent Law Treaty, which covers administrative or formal requirements for the filing of patent applications in patent offices. The aim of the proposed treaty is to harmonize procedures for patent applications around the world. The Committee decided that the draft Treaty could be negotiated and established by a Diplomatic Conference tentatively scheduled for May/June 2000.

d. *Standing Committee on Information Technologies*

The Standing Committee on Information Technologies (SCIT) was established to oversee the development of technical standards in the process of providing intellectual property information and to promote the exchange of information via networks such as WIPOnet.

WIPOnet

In June, the SCIT, which comprises WIPO member States and certain international governmental and non-governmental organizations, endorsed measures to establish a WIPO Global Information Network, popularly known as WIPOnet, which will provide network services to intellectual property offices worldwide. The SCIT endorsement followed an approval by the assemblies of member States in March 1998, allocating a budget of some 24 million Swiss francs for the project in the budget for the biennium 1998-1999.

Through its secure, private network, WIPOnet will greatly facilitate the rapid exchange of data between intellectual property offices worldwide, provide e-mail and videoconferencing services and provide access to huge amounts of data via the Intellectual Property Digital Libraries. It will provide a means for electronic filing by the public of international patent applications filed under the Patent Cooperation Treaty, assuring the secured, timely transmission of confidential text and images contained in international patent applications. Users will have access to distance learning facilities offered by the WIPO Worldwide Academy. A 24-hour help desk will be staffed by technicians conversant in the six WIPO working languages.

WIPOnet will be continuously upgraded to offer a full range of services to members of the worldwide intellectual property community. It will ultimately serve as a vehicle for discussion of innovative ideas for using information technology, as well as a means for implementation of new initiatives involving information technology and the promotion and protection of intellectual property. Deployment of WIPOnet is expected to begin in July 1999.

(*c*) International registration activities

Of most direct benefit and interest to the market sector and enterprises within the purview of WIPO are its international registration services. Such services are provided in close cooperation with the industrial property administrations of countries which have adhered to the Patent Cooperation Treaty (PCT system), the Madrid Agreement for the International Registration of Marks and/or its Protocol (com-

monly known as the Madrid system) and the Hague Agreement for the International Deposit of Industrial Designs (the Hague system). Collectively, the WIPO global protection systems generated in 1998 total gross revenue of about Sw F 174 million or the equivalent of 52 per cent of the projected total fee income for the biennium 1998-1999.

(i) *Patents*

PCT applications in 1998 totalled just over 67,000, representing an unprecedented rise of 23.1 per cent over the total for 1997. The WIPO secretariat itself, acting as a receiving office of international applications, enjoyed an astonishing rise of 32.8 per cent over 1997, receiving about 2,200 applications from 49 countries. Notwithstanding these and other demands on the administration of the Patent Cooperation Treaty at WIPO, all time limits and other obligations under the Treaty and its Regulations were honoured.

Throughout 1998, WIPO registration services were constantly upgraded. Revisions of the PCT system were made to further rationalize and simplify procedures. Those revisions took the form of modifications to the Regulations, administrative instructions, forms, receiving office guidelines, international search guidelines and international preliminary examination guidelines as well as to the PCT Applicant's Guide.

In parallel, about Sw F 40 million was approved for a major computerization project for the PCT system, to be carried out over several years. Preliminary steps were taken in the course of the year to implement the project, whose main features are:

—Introducing an electronic document management system for processing the large numbers of applications;

—Developing an electronic filing software;

—Communicating electronically between WIPO and the PCT national and regional administrations of member States;

—Developing new standards for electronic filing, coding and transmission of data.

The *PCT Gazette*, containing information on published PCT applications, became available in April 1998 in CD-ROMs and on the Internet. The full contents of all international applications published since the PCT system began operations in 1978 are now available on 880 CD-ROMs. The published PCT applications continued to be available in one of seven publication languages: Chinese, English, French, German, Japanese, Russian and Spanish.

(ii) *Marks*

In 1998, international registrations under the Madrid Agreement and the Madrid Protocol overtook the landmark figure of 20,000 for the first time, with an increase of 5 per cent over the 1997 figure. Renewals of international registrations (about 5,800), for their part, grew by almost 19 per cent compared to 1997. In all, registrations and renewals outpaced 1997 by close to 8 per cent.

Like the PCT system, the Madrid system benefited in 1998 from continuing computerization, with the objective of making operations more efficient and speedy. In December 1998, a major milestone was attained in the area of communications with the trademark administrations of the Madrid States, with the electronic receipt,

from the Swiss Administration, of the first electronic international application. At the other end of the processing chain, the WIPO secretariat was able to send electronically notifications to six offices of Madrid members. It is expected that in the course of 1999, electronic notifications will be accepted by a number of Madrid members as the sole means of communication, thereby significantly reducing paper and mailing costs.

In 1998, 12 countries became bound by the Madrid Protocol, with three of them adhering as well to the Madrid Agreement. At the end of the year, the Madrid system had 59 contracting States. As the latter figure is only about a third of the world's countries, the potential for growth of the Madrid system remains enormous. Throughout the year, the WIPO secretariat undertook many activities aimed at making the system better known to potential member States and at promoting greater use by current member States. Such promotional activities included study visits to WIPO, advisory missions to countries, training on the job and at WIPO, seminars, the production of a video on the Madrid Protocol as well as improving and updating relevant information on the WIPO Internet site.

(iii) *Industrial designs*

During the year under review, the number of international deposits of industrial designs under the Hague system was constant (3,970) compared to 1997. Renewals (almost 2,500), on the other hand, rose by 11 per cent compared to 1997. Despite the number of deposits remaining constant, the secretariat responded to several significant developments throughout the year:

— Changes in procedures following the entry into force, in the last quarter of 1997, of important amendments to the Hague Regulations, which made the system more user-friendly;

— Computerization of registration procedures after a seven-month testing period from June to December, leading to a complete electronic database on all international deposits currently in force being made available at the WIPO secretariat as from 1 January 1999;

— Work on the electronic publication on CD-ROM of new deposits, permitting the discontinuation, as from the beginning of 1999, of the paper publication of designs;

— Associated with the above-mentioned electronic publication was a change to some regulations and administrative instructions;

— Preparation and distribution, in six languages, of the working documents for the Diplomatic Conference in June-July 1999 to establish a new Act of the existing Hague Agreement. The new Act, if established, will be attractive to countries which have so far stayed outside the system. In connection with the Conference, a preparatory meeting was held in October 1998 and adopted the draft agenda of the Conference and its draft rules of procedure. The Conference will be held in Geneva.

(*d*) Electronic commerce; Internet domain names

Intellectual property rights are of central importance in maintaining a stable and positive environment for the development of electronic commerce. In response to the rapid rise of electronic commerce, and to member States' request that WIPO look into the intellectual property aspects of such commerce, an Electronic Com-

merce Section was established in 1998. It has the task, among others, of coordinating the many programmes and activities of WIPO which deal directly or indirectly with the intellectual property aspects of electronic commerce.

Internet domain names

In July 1998, the Electronic Commerce Section began managing an international consultative process to address the intellectual property and related dispute resolution issues associated with Internet domain names. This consultative process was designed to facilitate wide international participation by both the public and the private sectors that were concerned with the use and future directions of the Internet in general and domain names in particular. Consultations took the forms of traditional written proposals and comments, an electronic forum set up by WIPO and a series of regional consultation meetings in different parts of the world from September to November 1998. In December 1998, WIPO published an interim report entitled "The Management of Internet Names and Addresses: Intellectual Property Issues", containing the findings and draft recommendations dealing with the following four topics:

— Best practices designed to minimize conflicts arising from domain name registrations;

— The need for uniform dispute resolution procedures;

— Protection for famous and well-known marks;

— The impact of adding new top-level domains on intellectual property.

Some key recommendations in the report are:

— Best practices for registration authorities and users which minimize conflicts due to domain name registration; the best practices focus effective contractual arrangements for such registration;

— Reliable contact details to be provided by applicants for registration, with cancellation of the domain name in case of non-compliance;

— The existence of databases containing such contact details, while accommodating privacy concerns associated with access to such databases;

— A uniform administrative dispute resolution procedure which resolves domain name conflicts quickly and relatively cheaply, with an online option;

— Effective prohibition of abusive domain name practices to take care of the concerns of owners of famous and well-known marks;

— Possible controlled introduction of new generic top-level domains.

Given the widespread interest on the subject, the views of over 1,000 persons, including representatives of companies, associations, Governments and intergovernmental organizations from the public and private sectors, were taken into account in preparing the interim report. These representatives either attended the regional consultations or sent comments through the electronic forum set up by WIPO to receive views and suggestions. The special WIPO Internet site containing information on the domain name consultations had an average of about 82,000 hits per month after it was set up in July 1998.

The interim report will be finalized in mid-April 1999, after another round of international consultations. Thereafter, the final recommendations of WIPO in the April report will be presented to the member States and presented to the Internet Corporation for Assigned Names and Numbers.

(*e*) WIPO Arbitration and Mediation Centre

In 1998, the Centre continued to provide information to interested circles, making referrals for arbitrators and mediators, drafting rules and organizing training. About 90 paying participants attended the Centre's training programmes in 1998. An important patent mediation under the WIPO Rules took place in 1998, and nine other informal referrals were made. Another successful event was the adoption of the WIPO Mediation Rules by the European textile design industry as a standard feature of its new Stop Copy Designs scheme.

The Centre concentrated on developing an Internet-based online arbitration facility aimed at making dispute resolution faster and less costly and expected to be operational in 1999. In 1998, three Internet service providers adopted this online facility, while many other parties expressed their interest in using the facility in view of the growth of electronic commerce.

(*f*) Intellectual property and global issues

Rapid technological advance, economic globalization and the growing importance of intellectual property in this context require active study of the links between intellectual property and global issues such as traditional knowledge, biotechnology, biological diversity, folklore, environmental protection and human rights.

In 1998, WIPO undertook a number of missions and organized two international round-table discussions. The missions, to the South Pacific, South Asia, Africa and North America, investigated the needs and expectations of certain holders of traditional knowledge with respect to the intellectual property system.

(i) *WIPO studies the needs of indigenous peoples*

WIPO hosted in July a round-table discussion on intellectual property and indigenous peoples. Some 200 representatives of indigenous groups from Africa, the Americas, Asia, Europe and the South Pacific attended the two-day gathering. They shared experiences and aspirations concerning the protection of traditional knowledge, innovations and culture by means of intellectual property. Representatives of Governments and intergovernmental and non-governmental organizations also attended. Chief among the outcome was the participants' desire for WIPO to organize further discussions on the subject on a regular basis.

WIPO also began preparations for carrying out a pilot project to document traditional knowledge formations and studies on the ways information technology could protect and conserve traditional knowledge and cultural heritage. Significant progress was made towards completion of a feasibility study on a regional system of collective copyright management in the Caribbean region.

(ii) *Cooperation with the World Trade Organization*

The World Trade Organization (WTO) is one of the key institutional partners of WIPO. Since the two organizations concluded their Cooperation Agreement in 1995, they have worked closely in making available information on the intellectual property laws of their members, implementing article 6 ter of the Paris Convention for the TRIPS Agreement and offering legal-technical assistance and technical cooperation to their developing country members. During 1998, WIPO and WTO intensified their common efforts to assist developing countries in meeting their obligations under the TRIPS Agreement by the 1 January 2000 deadline. On 16 Sep-

tember, eminent specialists from government and industry joined senior WIPO and WTO officials in a joint symposium to review the implementation of the TRIPS Agreement.

(iii) *Working with the market sector*

The market sector and civil society together constitute one of the two major constituencies of WIPO, the other being the member States. In recognition of the growing importance of the market sector in the work and financial well-being of the organization, the Non-Governmental and Enterprise Affairs Division was created in 1998. The Division oversees relations and cooperation with NGOs and with industry. In 1998, the Division organized meetings between the secretariat and a number of NGOs to explore closer cooperation.

In 1998, there were 141 international non-governmental organizations with observer status at WIPO. They were invited to meetings of working groups, Standing Committees and the assemblies and other decision-making bodies of the States members of WIPO, depending on the subjects being discussed. As observers, they had the right to express their views at those meetings and to present papers and proposals. For certain meetings, national NGOs could be and were also invited, on a case-by-case basis.

For a number of years, certain NGOs have also been cooperating with WIPO in a third area: providing support in kind for the latter's cooperation for development programme, with benefits for all the partners concerned, i.e., the target developing countries, the NGOs themselves and WIPO. The support of national NGOs can be a determining factor in the organization's relations with a given member State, particularly regarding accession to the treaties providing global protection services.

(iv) *New members and new accessions*

The year witnessed a dramatic rise in the total number of accessions or ratifications to the WIPO treaties, rising to 83 in 1998 from 60 the year before. Membership of WIPO currently stands at 171 countries. The following figures reflect the additional countries having ratified or acceded to the treaties indicated, which are already in force, with the figure in parentheses representing the total number of States party to the corresponding treaty by the end of 1998.

— WIPO Convention: 6 (171)

— Paris Convention for the Protection of Industrial Property: 8 (151)

— Patent Cooperation Treaty: 6 (100)

— Madrid Agreement concerning the International Registration of Marks: 4 (51)

— Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks: 14 (36)

— Trademark Law Treaty: 11 (22)

— Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks: 6 (58)

— Locarno Agreement Establishing an International Classification for Industrial Designs: 5 (35)

— Strasbourg Agreement concerning the International Patent Classification: 4 (43)

— Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks: 2 (13)

— Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure: 4 (45)

— Nairobi Treaty on the Protection of the Olympic Symbol: 2 (39)

— Berne Convention for the Protection of Literary and Artistic Works: 6 (133)

— Rome International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations: 3 (58)

— Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms: 2 (57)

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10. UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

(*a*) Agreements, memoranda of understanding and joint communiqués with States

Algeria

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Minister of Industry and Restructuring of the People's Democratic Republic of Algeria. Signed on 14 June 1998

Austria

Headquarters Agreement with Austria. On 26 May 1998, the exchange between the Government and UNIDO of the instrument of ratification by the Government and the notification of approval by UNIDO of the Agreement between the Republic of Austria and the United Nations Industrial Development Organization regarding the Headquarters of the United Nations Industrial Development Organization took place. In accordance with its article XV, section 58, the Agreement entered into force on 1 June 1998[185]

Ethiopia

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Minister of Trade and Industry of Ethiopia. Signed on 20 November 1998

Ghana

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Minister for Trade and Industry of Ghana. Signed on 20 November 1998

Guinea

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Minister of Promotion of the Private

Sector, Industry and Commerce of the Republic of Guinea. Signed on 20 November 1998

Lebanon

Memorandum of Understanding between the United Nations Industrial Development Organization and the Government of Lebanon on continued operation in 1998 of a UNIDO field office in Beirut covering Lebanon, the Syrian Arab Republic and Jordan. Signed on 25 June 1998[186]

Netherlands

Memorandum of Understanding for the promotion of clean and sustainable industrial production and energy conservation between the United Nations Industrial Development Organization and the Netherlands Management Cooperation Programme and the Directorate-General for Environmental Protection of the Ministry of Housing, Spatial Planning and the Environment. Signed on 20 March, and 14 and 23 April 1998

Sudan

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Minister of National Industry of the Republic of the Sudan. Signed on 20 November 1998

Syrian Arab Republic

Memorandum of Understanding between the United Nations Industrial Development Organization, the Government of the Syrian Arab Republic, the Centro de Investigaciones Textiles and the Instituto Nacional de Tecnología Industrial (Argentina). Signed on 27 August 1998

Uganda

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Second Deputy Prime Minister and Minister of Tourism, Trade and Industry of Uganda. Signed on 20 November 1998

United Kingdom of Great Britain and Northern Ireland

Memorandum of Understanding between the United Nations Industrial Development Organization and the Government of the United Kingdom of Great Britain and Northern Ireland on the provision of Associate Experts. Signed on 18 December 1998.

United Republic of Tanzania

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Deputy Minister of Industry and Commerce of the United Republic of Tanzania. Signed on 20 November 1998.

(*b*) Agreements with intergovernmental, governmental, non-governmental and other organizations and entities

(i) Memorandum of Understanding between the United Nations Industrial Development Organization and the Common Fund for Commodities. Signed on 13 February 1998

(ii) Memorandum of Understanding for the promotion of clean and sustainable industrial production and conservation of energy between the United Nations Industrial Development Organization and the Netherlands Management Cooperation Programme and the Directorate-General for Environmental Protection of the Ministry of Housing, Spatial Planning and the Environment. Signed on 20 March, and 14 and 23 April 1998

(iii) Cooperative arrangement between the United Nations Industrial Development Organization and the National Science and Technology Development Agency of Thailand. Signed on 5 June 1998

(iv) Cooperative arrangement between the United Nations Industrial Development Organization and the Government of the Moscow Oblast, Russian Federation. Signed on 1 October 1998

(v) Cooperative arrangement between the United Nations Industrial Development Organization and the International Congress of Industrialists and Entrepreneurs. Signed on 23 October 1998

(vi) Memorandum of Understanding between the United Nations Industrial Development Organization and the National Centre for Productivity and Quality (Chile). Signed on 13 November 1998

(vii) Memorandum of Understanding between the United Nations Industrial Development Organization and the Automotive Research Association of India. Signed on 18 November 1998

(viii) Cooperation Agreement between the United Nations Industrial Development Organization and Fiat S.p.A. Signed on 18 November 1998

(ix) Memorandum of Understanding between the United Nations Industrial Development Organization and the Institut Européen d'Administration des Affaires (INSEAD). Signed on 18 November 1998

(x) Cooperation Agreement between the United Nations Industrial Development Organization and The Prince of Wales Business Leaders Forum. Signed on 18 November 1998

(*c*) Agreements with the United Nations or its organs

(i) Basic Implementation Agreement between the United Nations Industrial Development Organization and the United Nations. Signed on 19 and 29 October 1998, respectively

(ii) Memorandum of Understanding between the United Nations Industrial Development Organization and the United Nations Conference on Trade and Development concerning a strategic alliance for investment promotion in developing countries. Signed on 26 March 1998[187]

(iii) Letter of Agreement between the United Nations Development Programme and the United Nations Industrial Development Organization concerning collaboration between the two organizations. Signed on 31 October 1998[188]

(iv) Memorandum of Understanding between the United Nations Industrial Development Organization and the United Nations Environment Programme. Signed on 11 November 1998

(v) Letter of Agreement between the United Nations Industrial Development Organization, the United Nations Office at Vienna and the Provisional Technical Secretariat of the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization on occupation of space. Signed on 16 June and 8 July 1998

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11. INTERNATIONAL ATOMIC ENERGY AGENCY

(*a*) Privileges and immunities

In 1998, Kazakhstan and Kuwait adhered to the Agreement on the Privileges and Immunities of the International Atomic Energy Agency.[189]

(*b*) Legal instruments

Convention on the Physical Protection of Nuclear Material[190]

In 1998, Bosnia and Herzegovina, Cyprus, the Republic of Moldova and Uzbekistan adhered to the Convention. By the end of the year, there were 63 parties.

Convention on Early Notification of a Nuclear Accident[191]

In 1998, Bosnia and Herzegovina and the Republic of Moldova adhered to the Convention. By the end of the year, there were 82 parties.

Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency[192]

In 1998, Bosnia and Herzegovina and the Republic of Moldova adhered to the Convention. By the end of the year, there were 77 parties.

Vienna Convention on Civil Liability for Nuclear Damage, 1963[193]

In 1998, Belarus, Bosnia and Herzegovina and the Republic of Moldova adhered to the Convention. By the end of the year, there were 31 parties.

Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention[194]

During 1998, the status of the Joint Protocol remained unchanged, with 20 parties.

Convention on Nuclear Safety[195]

In 1998, Armenia, Belarus, Denmark, Italy, Portugal, the Republic of Moldova and Ukraine adhered to the Convention. By the end of the year, there were 49 parties.

Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management[196]

In 1998, Australia, Austria, Bulgaria, Canada, Croatia, Denmark, Greece, Italy, Peru, the Philippines and Spain signed the Convention. Canada, Germany, Hungary,

Norway and Slovakia adhered to the Convention. By the end of the year, there were 5 Contracting States and 37 signatories.

Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage[197]

In 1998, Belarus, the Czech Republic, Italy, Peru and the Philippines signed the Protocol. Romania adhered to the Protocol. By the end of 1998, there was 1 Contracting State and 14 signatories.

Convention on Supplementary Compensation for Nuclear Damage[198]

In 1998, the Czech Republic, Italy, Peru and the Philippines signed the Convention. By the end of 1998, there were 13 signatories.

Extension of the African Regional Cooperative Agreement for Research, Development and Training related to Nuclear Energy (AFRA)[199]

In 1998, Senegal, Zambia and Zimbabwe adhered to the Extension of the Agreement. By the end of the year, there were 24 parties.

Second Agreement to Extend the 1987 Regional Cooperative Agreement for Research, Development and Training related to Nuclear Science and Technology, 1987 (RCA)[200]

In 1998, Indonesia, Myanmar, the Philippines and Thailand adhered to the Agreement. By the end of the year, there were 17 parties.

Revised Supplementary Agreement concerning the Provision of Technical Assistance by the International Atomic Energy Agency (RSA)[201]

In 1998, the Republic of Moldova concluded the Agreement. By the end of the year, there were 88 States that had concluded the RSA Agreement.

Cooperation Agreement for the Promotion of Nuclear Science and Technology in Latin America and the Caribbean (ARCAL)[202]

The Agreement was opened for signature on 25 September 1998 at the 42nd session of the General Conference of the International Atomic Energy Agency. The Agreement will remain open for signature until its entry into force. In 1998, Argentina, Bolivia, Chile, Colombia, Costa Rica, Cuba, Ecuador, Guatemala, Paraguay, Peru, Uruguay and Venezuela signed the Agreement. By the end of the year, there were 12 signatories.

Safeguards Agreements

During 1998, Safeguards Agreements pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons[203] entered into force with Namibia,[204] San Marino[205] and Ukraine[206]. Two Safeguards Agreements, pursuant to the Non-Proliferation Treaty, with Azerbaijan and Kyrgyzstan, were signed, and a Safeguards Agreement with Slovakia was approved by the IAEA Board of Governors. These Agreements have not yet entered into force.

An Agreement between the French Republic, the European Atomic Energy Community (Euratom) and IAEA pursuant to Additional Protocol I to the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco),[207] was approved by the IAEA Board of Governors, but has not yet been signed.

A Protocol suspending the application of safeguards in Brazil pursuant to the Agreement of 26 February 1976 between IAEA, Brazil and Germany,[208] in the light of the Safeguards Agreement between Argentina, Brazil, the Brazilian-Argentine Agency for the Accounting and Control of Nuclear Materials and IAEA (INFCIRC/435), was signed but has not yet entered into force. Upon the entry into force of that Protocol, the application of safeguards in Brazil under the Agreement between IAEA, Brazil and Germany will be suspended so long as the Agreement set out in INFCIRC/435 is in force.

Protocols Additional to the Safeguards Agreements between IAEA and the Holy See,[209] Jordan,[210] New Zealand[211] and Uzbekistan[212] entered into force. A Protocol Additional to the Safeguards Agreement between IAEA and Ghana[213] was signed; pending its entry into force, the Protocol is to be applied provisionally. Protocols Additional to Safeguards Agreements were signed by Bulgaria, Canada, China, Croatia, France and EURATOM, Hungary, Japan, Lithuania, Slovenia, the United Kingdom and EURATOM, the United States and EURATOM, and the 13 non-nuclear-weapon States of the European Union, but have not entered into force. Protocols Additional to Safeguards Agreements between IAEA and Cyprus, Monaco and Slovakia were also approved by the IAEA Board of Governors.

By the end of 1998, there were 222 Safeguards Agreements in force with 138 States (and Taiwan, Province of China). Safeguards Agreements which satisfy the requirements of the Non-Proliferation Treaty were in force with 126 States. By the end of 1998, 38 States had concluded an Additional Protocol, five of which had entered into force.

IAEA legislative assistance activities

During 1998, legislative assistance to member States continued to be provided by the Agency. Three main types of activities for the provision of legislative assistance have been developed:

- Design and provision of training on nuclear law, through seminars and workshops and individual training of persons from member States involved in drafting nuclear legislation;
- Advice on specific nuclear national legislation;
- Development of reference material for the assessment of national nuclear regulatory regimes and for the drafting of nuclear legislation.

In this respect, during 1998, legislative assistance activities under technical cooperation projects of the Agency included two workshops for the Countries of Central and Eastern Europe and the newly independent States.

The first workshop, held in March 1998 at the Agency, gave an overview of the developments in nuclear law and regulations in the areas of nuclear safety, civil liability for nuclear damage, security of material and safeguards. Within the framework of the workshop, future programme activities were reviewed and updated with each participating country. Activities at the regional level were also discussed and agreed upon.

The second workshop was held at Tallinn and was organized together with the Organisation for Economic Cooperation and Development/Nuclear Energy Agency and the European Commission. The workshop addressed, in particular, how legal aspects related to safeguards, physical protection of nuclear material and import-export control rules contribute to the prevention of illicit trafficking of radioactive material and other radioactive sources.

In 1998, training of individuals on nuclear legislation continued to be provided through the Agency's technical cooperation programme.

During 1998, advice on specific national legislation was provided to various States upon their request.

The Agency initiated actions to institute legislative assistance support to the countries of the East Asia and the Pacific region.

NOTES

[1] For detailed information, see *The United Nations Disarmament Yearbook*, vol. 23: 1998 (United Nations publication, Sales No. 99.IX.7).

[2] For the text of the 1996 Comprehensive Nuclear-Test-Ban Treaty, see A/50/1027, annex.

[3] United Nations, *Treaty Series*, vol. 729, p. 159.

[4] INFCIRC/540 (corrected).

[5] By the end of the year, the Model Protocol was in force in five States: Australia, Holy See, Jordan, New Zealand and Uzbekistan.

[6] S/1998/1172.

[7] Treaty on Further Resolution and Limitation of Strategic Offensive Arms: *The United Nations Disarmament Yearbook*, vol. 18: 1993 (United Nations publication, Sales No. E.94. IX.1), appendix II.

[8] United Nations, *Treaty Series*, vol. 634, p. 281.

[9] Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction: United Nations, *Treaty Series*, vol. 1974, p. 45.

[10] Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction: General Assembly resolution 2826 (XXVI), annex.

[11] Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare: League of Nations, *Treaty Series*, vol. XCIV (1929).

[12] CD/1478.

[13] *The United Nations Disarmament Yearbook*, vol. 5: 1980 (United Nations publication, Sales No. E.81.IX.4), appendix VII.

[14] CCW/CONF.I/16 (Part I), annex A.

[15] Ibid., annex B.

[16] For the report of the Subcommittee, see A/AC.105/698.

[17] A/AC.105/697 and Corr.1, paras. 81 and 153.

[18] A/AC.105/635 and Add.1-5.

[19] The five instruments are: Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (General Assembly resolution 2222 (XXI), annex); Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (resolution 2345 (XXII), annex); Convention on International Liability for Damage Caused by Space Objects (resolution 2777 (XXVI), annex); Convention on Registration of Objects Launched into Outer Space (resolution 3235 (XXIX), annex); and Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (resolution 34/68, annex).

[20] A/AC.105/C.2/L.210.

[21] A/AC.105/C.2/L.211.

[22] A/AC. 105/674, paras. 39 and 43.

[23] General Assembly resolution 37/92, annex.

[24] General Assembly resolution 41/65, annex.

[25] General Assembly resolution 48/263, annex.

[26] United Nations, *Treaty Series*, vol. 1363, p. 3.

[27] For the report of the Committee, see *Official Records of the General Assembly, Fifty-third Session, Supplement No. 20* (A/53/20).

[28] A/53/265.

[29] A/53/127.

[30] For the report of the session, see *Official Records of the General Assembly, Fifty-third Session, Supplement No. 25* (A/53/25).

[31] UNEP/FAO/PIC/INC.5/3.

[32] *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992* (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: *Resolutions adopted by the Conference*, resolution 1, annex II.

[33] General Assembly resolution S-19/2, annex.

[34] United Nations, *Treaty Series* vol. 1771, p. 107.

[35] Ibid., vol. 1760, p. 79.

[36] Ibid., vol. 1954, p. 3.

[37] A/53/449.

[38] A/53/407.

[39] A/53/398.

[40] United Nations publication, Sales No. E.98.II.C.1.

[41] United Nations publication, Sales No. E.98.II.D.6.

[42] A/53/373.

[43] A/53/254.

[44] A/53/336.

[45] See E/1996/99.

[46] *International Legal Materials*, vol. 37, p. 1.

[47] See E/CN.15/1998/6/Add.1, chap. I.

[48] See E/CN.15/1998/6/Add.2, chap. I.

[49] *International Legal Materials*, vol. 37, p. 12.

[50] A/53/384.

[51] E/CN.15/1998/6.

[52] E/CN.15/1998/7, annex.

[53] General Assembly resolution 45/117, annex.

[54] A/53/38.

[55] A/53/409.

[56] *World Congress against Commercial Sexual Exploitation of Children, Stockholm, 27-31 August 1966*, *Final Report of the Congress*, two volumes (Stockholm, Government of Sweden, January 1997).

[57] *Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annex II.

[58] A/CONF.157/24 (part I), chap. III.

[59] United Nations, *Treaty Series*, vol. 520, p. 151.

[60] Ibid., vol. 1019, p. 175.

[61] Ibid., vol. 976, p. 3.

[62] Ibid., p. 105.

[63] See *Official Records of the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 25 November–20 December 1988*, vol. I (United Nations publication, Sales No. E.94.XI.5).

[64] Resolution S-20/2, annex.

[65] Resolution S-20/3, annex.

[66] Resolution S-20/4, annex.

[67] Ibid., annex A.

[68] Ibid., annex B.

[69] Ibid., annex C.

[70] Ibid., annex D.

[71] Ibid., annex E.

[72] A/49/139-E/1994/57.

[73] See *Report of the International Conference on Drug Abuse and Illicit Trafficking, Vienna 17-26 June 1987* (United Nations publication, Sales No. E.87.I.18), chap. I, sect. A.

[74] See General Assembly resolution S-17/2, annex.

[75] United Nations, *Treaty Series*, vol. 993, p. 3.

[76] Ibid., vol. 999, p. 171.

[77] Ibid.

[78] General Assembly resolution 44/128, annex.

[79] United Nations, *Treaty Series*, vol. 660, p. 195.

[80] See CERD/SP/45, annex.

[81] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 18* (A/53/18).

[82] General Assembly resolution 49/146, annex.

[83] United Nations, *Treaty Series*, vol. 1015, p. 243.

[84] Ibid., vol. 1249, p. 13.

[85] CEDAW/SP/1995/2, annex.

[86] A/53/318.

[87] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 38* (A/53/38/Rev.1), part two, chap. I, sect. A.

[88] General Assembly resolution 217 A (III).

[89] CEDAW/C/1999/4.

[90] United Nations, *Treaty Series*, vol. 1465, p. 85.

[91] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44).

[92] United Nations, *Treaty Series*, vol. 1577, p. 3.

[93] See General Assembly resolution 50/155, para. 1.

[94] A/53/281.

[95] General Assembly resolution 45/158, annex.

[96] A/53/230.

[97] A/53/280.

[98] A/53/469.

[99] See A/C.3/53/SR.34.

[100] United Nations Educational, Scientific and Cultural Organization, *Records of the General Conference, Twenty-ninth Session,* vol. 1, *Resolutions*, resolution 16.

[101] A/53/268.

[102] United Nations, *Treaty Series*, vol. 189, p. 137.

[103] Ibid., vol. 606, p. 267.

[104] Ibid., vol. 360, p. 117.

[105] Ibid., vol. 989, p. 175.

[106] For detailed information, see *Official Records of the General Assembly, Fifty-third Session, Supplement No. 12* (A/53/12), and ibid., *Supplement No. 12A* (A/53/12/Add.l).

[107] A/53/325.

[108] A/53/413.

[109] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 12* (A/53/12).

[110] Ibid., *Supplement No. 12A* (A/53/12/Add.1).

[111] A/53/328.

[112] See A/53/219-S/1998/737; see also *Official Records of the Security Council, Fifty-third Year, Supplement for July, August and September 1998*, document S/1998/737.

[113] A/53/429-S/1998/857, annex; see *Official Records of the Security Council, Fifty-third Year, Supplement for July, August and September 1998*, document S/1998/857.

[114] A/53/486.

[115] A/53/501.

[116] General Assembly resolution 49/59, annex.

[117] See *The Law of the Sea: Official Text of the United Nations Convention on the Law of the Sea of 10 December 1982 and of the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 with Index and Excerpts from the Final Act of the Third United Nations Conference on the Law of the Sea* (United Nations publication, Sales No. E.97.V.10).

[118] A/53/456.

[119] For the text of the Order, see chap. VII of the present volume.

[120] A/53/473.

[121] For the composition of the Court, see *Official Records of the General Assembly, Fifty-third Session, Supplement No. 4* (A/53/4).

[122] As of 31 December 1998, the number of States recognizing the jurisdiction of the Court as compulsory, in accordance with declarations filed under Article 36, paragraph 2, of the Statute of the International Court of Justice, increased by 2, bringing the total to 63.

[123] For detailed information, see *I.C.J. Yearbook 1997-1998*, No. 52, *I.C.J. Yearbook, 1998-1999*, No. 53.

[124] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 4* (A/53/4).

[125] For the membership of the International Law Commission, see *Official Records of the General Assembly, Fifty-third Session, Supplement No. 10* (A/53/10), chap. I, sect. A.

[126] For detailed information, see *Official Records of the General Assembly, Fifty-third Session, Supplement No. 10* (A/53/10).

[127] United Nations publication, Sales No. 98.V.5.

[128] United Nations publication, Sales No. 98.V.10.

[129] For the membership of the United Nations Commission on International Trade Law, see *Official Records of the General Assembly, Fifty-third Session, Supplement No. 17* (A/53/17), chap. I, sect. B.

[130] For detailed information, see *Yearbook of the United Nations Commission on International Trade Law*, vol. XXIX: 1998 (United Nations publication, Sales No. 99.V.12).

[131] A/CN.9/446.

[132] A/CN.9/445 and A/CN.9/447.

[133] For the text of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, see United Nations, *Treaty Series*, vol. 330, p. 3.

[134] A/CN.9/SER.C/ABSTRACTS/13-17.

[135] United Nations, *Treaty Series*, vol. 1489, p. 3.

[136] *Yearbook of the United Nations Commission on International Trade Law*, vol. XVI: 1985 (United Nations publication, Sales No. 87.V.4), annex I.

[137] www.un.org.at/uncitral.

[138] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 17* (A/53/17).

[139] United Nations *Treaty Series*, vol. 330, p. 3.

[140] Protocols: United Nations, *Treaty Series*, vol. 1125, Nos. 17512 and 17513; Conventions: ibid., vol. 75, Nos. 970-973.

[141] A/INF/52/6 and Add.1 and A/53/276 and Corr.1.

[142] A/53/274 and Add.1.

[143] *Yearbook of the International Law Commission, 1991*, vol. II (part two), chap. II, para. 28, document A/46/10.

[144] A/C.6/53/10, annex.

[145] A/C.6/53/11, annex.

[146] A/C.6/52/3, annex.

[147] A/53/492.

[148] A/CONF.129/15; see also *Juridical Yearbook 1986*, p. 218.

[149] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 26* (A/53/26).

[150] A/CONF.183/9; for the text of the Rome Statute, see chap. IV.3 of the present volume.

[151] See A/CONF.183/10, annex I.

[152] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 33* (A/53/33).

[153] See A/53/312, sect. IV.

[154] Ibid.

[155] A/53/314 and Corr.2 and Add.1.

[156] For detailed information, see *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 14* (A/55/14). The report covers the period from 1 July 1998 to 30 June 2000.

[157] See *Official Records of the General Assembly, Fifty-third Session, Supplement No. 14* (A/53/14), paras. 23-26. For the results of the survey, see the UNITAR web site (www.unitar.org).

[158] ILC, 86th session, Geneva, 1998, *Record of Proceedings*, vol. I, Nos. 20, 20A, and 22, and vol. II, p. 20; *Official Bulletin* of the ILO, vol. LXXXI, 1998, Series A, No. 2 (information on the preparatory work for the adoption of the Declaration is given in order to facilitate reference work. See: GB. 264/6, GB. 265/LILS/7, GB. 265/8/2, GB. 267/LILS/5, GB. 267/9/2, GB. 268/LILS/6, GB. 268/8/2, GB. 268/9/2, GB. 270/3/1, GB. 270/3/1 (Add.), GB. 271/3/1); see also: *The ILO Standards Setting and Globalization*, report of the Director-General, ILC, 85th session, Geneva, 1997, and *Consideration of a possible Declaration of principles of the International Labour Organization concerning fundamental rights and its appropriate follow-up*, ILC, 86th session, Geneva, 1998, report VII; Arabic, Chinese, English, French, German, Russian, Spanish.

[159] *Official Bulletin* of the ILO, vol. LXXXI, 1998, Series A, No. 2, pp. 76-84. See also: ILC, 86th session, Geneva, 1998, *Record of Proceedings*, vol. II, p. 2, and vol. I, Nos. 13 and 13A. (Information on the preparatory work for the adoption of the instrument is given in order to facilitate reference work. This instrument has been adopted using the *double discussion* procedure. *First discussion: General conditions to stimulate job creation in small and medium-sized enterprises*, ILC, 85th session, Geneva, 1997, reports V (1) and (2); *Second discussion: General conditions to stimulate job creation in small and medium-sized enterprises*, ILC, 86th session, Geneva, 1998, report IV (1) and reports IV (2A and 2B).)

[160] ILC, 86th session, Geneva, 1998, *Record of Proceedings*, vol. II, p. 36, and vol. I, No. 12, p. 7 and pp. 19-20, and No. 17, p. 22.

[161] ILC, 86th session, Geneva, 1998, *Record of Proceedings*, vol. II, p. 35, and vol. I, No. 12, p. 7 and pp. 18-19, and No. 17, p. 22.

[162] This report has been published as report III (part 1) to the 87th session of the Conference (1999) and comprises two volumes: vol. 1A, General Report and Observations concerning Particular Countries (report III (part 1A), and vol. 1B, General Survey of the Migration

for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Migration for Employment Recommendation (Revised), 1949 (No. 86), and the Migrant Workers Recommendation, 1975 (No. 151) (report III (part 1B)).

[163] GB.271/18/1.

[164] GB.272/8/1.

[165] GB.272/8/2.

[166] GB.273/15/3.

[167] GB.273/15/4.

[168] GB.273/15/5.

[169] GB.273/15/6.

[170] *Official Bulletin* of the ILO, vol. LXXXI, 1998, Series B, Special Supplement.

[171] GB.273/15/2.

[172] *Official Bulletin*, vol. LXXXI, 1998, Series B, No. 1.

[173] Ibid., No. 2.

[174] Ibid., No. 3.

[175] GB.271/WP/SDL/1/1, GB.271/WP/SDL/1/2.

[176] GB.273/WP/SDL/1, GB.273/WP/SDL/1(Add.), GB.273/WP/SDL/2.

[177] GB.271/LILS/WP/PRS/1, GB.271/LILS/WP/PRS/2, GB.271/LILS/WP/PRS/4/1, GB.271/LILS/5, GB.271/11/2.

[178] GB.273/LILS/WP/PRS/1, GB.273/LILS/WP/PRS/2, GB.273/LILS/WP/PRS/3, GB.273/LILS/WP/PRS/4, GB.273/LILS/4, GB.273/8/2.

[179] As of 31 December 1998.

[180] *United Nations Juridical Yearbook, 1966*, p. 196.

[181] A "freely usable" currency is defined as "a member's currency that IMF determines (i) is, in fact, widely used to make payments for international transactions, and (ii) is widely traded in the principal exchange markets". The designation "freely usable" for a currency has implications for the procedures surrounding the exchange of currencies in connection with the financial operations and transactions of the Fund and its members.

[182] The report of the sessions of the Legal Committee held during 1998 is contained in documents LEG 77/11 and LEG 78/11.

[183] LEG/MISC/2.

[184] LEG/MISC/1.

[185] For the text of the Agreement, see chap. II.B, sect. 6 (*b*), of the present volume.

[186] See chap. II.B, sect. 6 (c), of the present volume.

[187] For the text of the Memorandum of Understanding, see chap. II.B, sect. 6 (*a*), of the present volume.

[188] For the text of the Agreement, see chap. II.A, sect. 4 (*a*), of the present volume.

[189] INFCIRC/9 Rev.2.

[190] INFCIRC/274/Rev.l.

[191] INFCIRC/335.

[192] INFCIRC/336.

[193] INFCIRC/500.

[194] INFCIRC/402.

[195] INFCIRC/449.

[196] INFCIRC/546.

[197] INFCIRC/566.

[198] INFCIRC/567.

[199] INFCIRC/377.

[200] INFCIRC/167/Add.18.

[201] INFCIRC/267.
[202] INFCIRC/582.
[203] United Nations, *Treaty Series*, vol. 721, p. 161.
[204] INFCIRC/551.
[205] INFCIRC/575.
[206] INFCIRC/550 and 550/Corr.1.
[207] United Nations, *Treaty Series*, vol. 634, p. 281.
[208] INFCIRC/237.
[209] INFCIRC/187/Add.1.
[210] INFCIRC/258/Add.1.
[211] INFCIRC/185/Add.1.
[212] INFCIRC/508/Add.1 and Add.2.
[213] INFCIRC/226/Add.1.