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

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

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Chapter III

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

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

1. DISARMAMENT AND RELATED MATTERS[1]

(*a*) Nuclear disarmament and non-proliferation issues

The Conference on Disarmament, the single multilateral disarmament negotiating forum, had been unable to commence substantive work since 1998. Despite the Conference's inability in 2001 to establish a subsidiary body on nuclear disarmament, some progress was made on the issue, with both the Russian Federation and the United States of America, for the first time in 30 years, indicating a general willingness in the Conference on Disarmament, to establish an ad hoc committee on nuclear disarmament.

In December 2001, the United States announced its withdrawal from the 1972 Anti-Ballistic Missile Treaty,[2] stating that the Treaty hindered the Government's ability to develop ways to protect the country from future missile attacks from rogue States or terrorists. A formal notification was given to the Russian Federation pursuant to the Treaty, with the effective date of withdrawal being six months from the date of the announcement. At the same time, announcements were made by both the United States and the Russian Federation of their intentions to drastically reduce their nuclear arsenals.

A second Conference on Facilitating the Entry into Force of the Comprehensive Nuclear-Test-Ban Treaty of 1996,[3] which prohibits any nuclear-weapon-test explosion in any environment, was held in November 2001, at which the importance of the Treaty in the field of disarmament and non-proliferation was reaffirmed and the need for continued multilateral efforts to achieve its entry into force was stressed.

The 1997 Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management,[4] which applies to spent fuel and radioactive waste from civilian nuclear programmes and military or defence programmes when these materials have been permanently transferred to civilian facilities, as well as to material that has been declared by a Contracting Party to the Convention and to managed releases of radioactive materials into the environment from regulated nuclear facilities, entered into force on 18 June 2001.

Consideration by the General Assembly

At its fifty-sixth session, the General Assembly, on the recommendation of the First Committee, took action on 12 draft resolutions and two draft decisions on

topics related to these issues. On 29 November 2001, the Assembly adopted decision 56/413, entitled "United Nations Conference to identify ways of eliminating nuclear dangers in the context of nuclear disarmament", which had been introduced by Mexico in the First Committee. The United Kingdom of Great Britain and Northern Ireland, explaining its negative vote, together with those of France, the United States of America and Germany against the draft resolution in committee, stated that the process established by the 1968 Treaty on the Non-Proliferation of Nuclear Weapons[5] was the cornerstone of nuclear non-proliferation and the essential foundation of nuclear disarmament; therefore, in those delegations' view, an international conference as a separate process would conflict with that approach to nuclear disarmament.

The General Assembly also adopted resolution 56/25 B entitled "Convention on the Prohibition of the Use of Nuclear Weapons", which had been introduced by India in the First Committee. During the deliberations, Pakistan had supported the draft, reaffirming its belief that the non-use or threat of use of nuclear weapons had its basis in the Charter of the United Nations. The United States had voted against the draft resolution, stating in explanation that the adoption of an international convention was not a practical approach to the ultimate goal of the total elimination of nuclear weapons, which could be achieved rather by a step-by-step process of bilateral, unilateral and multilateral measures.

Resolution 56/24 B, entitled "Missiles", also adopted on 29 November, had been introduced by the Islamic Republic of Iran in the First Committee. Five States had abstained in the vote on the draft, with comments ranging from expressions of strong support for the draft international code of conduct developed by the Missile Technology Control Regime to references to the contributions of the United Nations panel of governmental experts on missiles, as well as to their own efforts in that regard. The United States questioned the draft's overall thrust and political intent, wondering whether its purpose was to divert attention and resources away from ongoing missile non-proliferation, including the draft international code of conduct. The United States held that efforts to curb the spread of missiles and related technology were more productive when conducted on a regional basis with the active participation of concerned States, rather than the vague approach embodied in the draft. Belgium, speaking on behalf of the European Union and a large number of States, as well as Japan, the Republic of Korea and Australia voiced disappointment that the draft failed to address satisfactorily the key issue of missile proliferation and related technology.

The General Assembly also adopted resolution 56/24 L, entitled "Prohibition of the dumping of radioactive waste", which had been introduced by the Sudan in the First Committee, on behalf of the Group of African States.

(*b*) Biological and chemical weapons

Biological Weapons Convention[6]

Despite increased concerns over bioterrorism after the 11 September 2001 attacks and the anthrax-related incidents that followed, multilateral efforts to strengthen the 1972 Biological Weapons Convention suffered setbacks. The Ad Hoc Group of States parties to the Biological Weapons Convention entered into its seventh year of negotiations on a verification protocol to the Convention; however, the United States rejected the composite texts proposed by the Chairman of the Group and of

further negotiations on the protocol. The Group was therefore unable to complete the negotiations on the draft protocol. Furthermore, the Fifth Review Conference of the States Parties to the Biological Weapons Convention was held from 19 November to 7 December, but due to divergent views and positions among States parties with regard to certain key issues, particularly the work of the Ad Hoc Group, the Conference suspended the session and agreed to resume the session in 2002.

Chemical Weapons Convention[7]

In 2001, further progress was achieved in the implementation of the 1992 Chemical Weapons Convention on the destruction of chemical weapons, as well as the destruction or conversion of chemical weapons production facilities to peaceful purposes. The sixth session of the Conference of the States Parties to the Chemical Weapons Convention was held at The Hague in May, and preparations commenced for the first Review Conference, to be convened in 2003. As part of the international efforts to combat terrorism, the Organisation for the Prohibition of Chemical Weapons (OPCW) established a working group to formulate specific measures to prevent terrorist groups from acquiring and using chemical weapons.

United Nations Monitoring, Verification and Inspection Commission (UNMOVIC)[8]

The College of Commissioners held four meetings during 2001 to review the implementation of Security Council resolution 1284 (1999) and other relevant resolutions, as well as to provide political advice and guidance to the Executive Chairman, including guidance on significant policy decisions and on the quarterly reports of the Chairman submitted to the Security Council through the Secretary-General. In addition to the members of the College, representatives of IAEA and OPCW continued to attend the meetings as observers.

One of the main focuses of the work of the Commission remained the identification of "unresolved disarmament issues" in Iraq through the reinforced system of ongoing monitoring and verification called for by the Security Council. In 2001, the Commission completed its review of the criteria for the classification of inspection sites and facilities throughout Iraq and prepared common layouts and formats for the reporting of site inspections to allow greater consistency and a clear basis for analysis. Work was also completed on revision and updating of the lists of dual-use items and materials to which the export/import mechanism applied. The revised lists were forwarded to the Security Council on 1 June 2001.[9]

As concerns its non-inspection-related sources of information, UNMOVIC initiated a commercial satellite imagery contract and continued to analyse the imagery it was receiving through that arrangement, principally for infrastructure changes at sites in Iraq previously subject to monitoring. The Commission also received the results of an independent study it had commissioned on open-source information concerning Iraq's weapons of mass destruction capabilities in the period following the withdrawal of the former Special Commission inspectors from the country.[10] Much work was devoted to improving the UNMOVIC database and archive and making them more readily available sources of information.

Consideration by the General Assembly

During its fifty-sixth session, the General Assembly took action, pursuant to recommendations of the First Committee, on one draft resolution and one draft deci-

sion regarding these issues. Decision 56/414 on the Biological Weapons Convention had been introduced by Hungary in the Committee and was adopted by the Assembly on 29 November. During the deliberations on the draft, several States had expressed their disappointment that the Committee could only adopt a procedural decision instead of a substantive resolution that would have established a political basis for continuing the Ad Hoc Group's mandate.

Resolution 56/24 K, introduced by Canada, Poland and Uruguay in the First Committee, was also adopted on 29 November. During the deliberations on the draft, Egypt had reiterated its well-known position with regard to the Convention. Due to regional security concerns, Egypt would continue to decline signing the Chemical Weapons Convention until Israel joined the Treaty on the Non-Proliferation of Nuclear Weapons.

(*c*) United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects

The Conference was convened from 9 to 20 July 2001 in New York, and on 20 July the Conference adopted the Programme of Action. The participating States resolved, in the Programme of Action, to develop, strengthen and implement agreed norms and measures at all levels to prevent, combat and eradicate the illicit manufacture of and trade in small arms and light weapons.

Participating States were also committed to formulating or strengthening national legislation and administrative measures to exercise effective control over the manufacture, export, import, transmission and brokering of small arms and light weapons and criminalizing illicit activities; to applying unique markings on and maintaining accurate record-keeping of each weapon to enable its timely identification and tracing; to destroying illicit or surplus weapons as necessary; and to enhancing transparency in general.

Furthermore, in the Programme of Action, the United Nations and other international organizations were encouraged to undertake initiatives to promote its implementation. In particular, the Secretary-General, through the Department for Disarmament Affairs, was requested to collate and circulate data and information provided by States on a voluntary basis, including national reports on implementation of the Programme of Action.

The Group of Governmental Experts completed the study of brokering activity, particularly illicit activities relating to small arms and light weapons, requested by the Secretary-General in General Assembly resolution 54/54 V of 15 December 1999. In its report, the Group discussed the feasibility of restricting the manufacture and trade of small arms and light weapons to the manufacturers and dealers authorized by States, which would cover the brokering activities, particularly illicit activities, related to such weapons, including transportation agents and financial transactions. The Expert Group submitted its report to the Conference as a background document.[11]

Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition,[12] *supplementing the United Nations Convention against Transnational Crime*[13]

In December 1998, the General Assembly established an open-ended ad hoc committee to elaborate a comprehensive international convention against transnational organized crime and three protocols to supplement the convention, including

a draft protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. After more than two years of negotiations, the Firearms Protocol was concluded at the twelfth session of the Ad Hoc Committee in Vienna on 2 March.

The purpose of the new instrument is to strengthen cooperation among States parties in order to prevent, combat and eradicate illicit activities involving firearms and ammunition. The 21-article Protocol contains provisions on confiscation, seizure and disposal of illegal firearms; record-keeping; marking; deactivation; general requirements for export; import and transit licensing of authorization systems; security and preventive measures; exchange of information; training and technical assistance; brokering; and settlement of disputes. The Protocol criminalizes offences such as illicit manufacturing and trafficking in firearms, their parts, components and ammunition, and falsifying or altering the markings on firearms. Once it has entered into force, the Protocol will provide an international law-enforcement mechanism for crime prevention and the prosecution of traffickers.

Consideration by the General Assembly

On the recommendation of the First Committee, the General Assembly at its fifty-sixth session took action on three draft resolutions on the subject matter covered in this section, including the adoption of resolution 56/24 U on assistance to States for curbing the illicit traffic in small arms and collecting them.

(*d*) Other conventional weapons issues

The Review Conference of the Convention on Certain Conventional Weapons[14] (Geneva, 11-21 December 2001) successfully concluded its work by reaching agreement on the Final Declaration and adopting several decisions and follow-up measures to strengthen the Convention. The most significant achievement of the Conference was the agreement to amend article I of the Convention in order to expand the scope of its application to non-international armed conflicts. The States parties also agreed to establish an open-ended group of governmental experts to address the issues of explosive remnants of war and mines other than anti-personnel mines. In addition, the Conference welcomed the entry into force of the 1996 amended Protocol II on mines, booby-traps and other devices[15] and the 1995 additional Protocol IV on Blinding Laser Weapons.[16]

The Third Annual Conference of the States Parties to Amended Protocol II, to the Convention on Certain Conventional Weapons and the Third Meeting of the States Parties to the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Mine-Ban Treaty)[17] reaffirmed the States parties' commitments to the objective of restricting the use of or outlawing altogether, anti-personnel landmines.

The two United Nations transparency instruments, the Register of Conventional Arms and the standardized instrument for international reporting of military expenditures, continued to contribute to building confidence among States in military matters. Although both instruments witnessed increases in the number of reporting States, differences among Member States continued, especially regarding the scope of the Register. Though the deliberations of the First Committee and the Conference on Disarmament highlighted these differences, the general trend continued in the direction of greater transparency in the interest of increased openness and confidence among States on military matters.

Consideration by the General Assembly

Pursuant to recommendations of the First Committee, the General Assembly at its fifty-sixth session took action on four draft resolutions and one draft decision dealing with the above subject matter. Resolution 56/24 Q, entitled "Transparency in armaments", the draft of which had been introduced by the Netherlands, was adopted on 29 November. During deliberations, in the First Committee the Libyan Arab Jamahiriya, speaking also on behalf of the members of the League of Arab States, had reiterated its support for transparency in armaments as a way of strengthening international peace and security and as a confidence-building measure, and expressed the belief that the scope of the Register should be broadened through the inclusion of information on sophisticated conventional weapons and weapons of mass destruction, specifically nuclear weapons. China, after expressing its view that the sale of arms by the United States to Taiwan Province of China constituted a grave infringement on China's sovereignty and interference in its internal affairs, stated that by reporting those sales in the Register, the United States had forced China to suspend its reporting to the Register since 1998, and China therefore could not support the draft decision.

(*e*) Regional disarmament

Efforts by Member States to address issues related to peace and security specific to their region or subregion continued throughout the year with varying urgency and success. While recognizing the contribution of different regional bodies to regional disarmament and arms control, the General Assembly, in its resolution on the topic, emphasized the role of the United Nations in promoting regional disarmament. The consolidation of the existing nuclear-weapon-free zones contributed to nuclear non-proliferation and security at the regional level. Efforts to finalize the treaty on a Central Asian nuclear-weapon-free zone were ongoing and the nuclear-weapon-free status of Mongolia was further strengthened.

Conventional weapons issues were addressed in a regional context in relation to the 2001 United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects and through enhancing transparency and other confidence-building measures. The Security Council continued to address ongoing conflicts in Africa, particularly in the intra-State ones. The Organization of African Unity (OAU) and subregional organizations addressed the security situation in a number of countries and undertook several initiatives to resolve armed conflicts in the region. A major development regarding existing regional organizations took place in Africa through the enactment of a series of decisions and measures to transform OAU into an African Union. The Economic Community of West African States moratorium, a pioneering subregional initiative to combat the proliferation of small arms in the region, was extended for another three years. In addition to dealing with broader issues of security, the Organization of American States continued its efforts to promote transparency in military matters and the implementation of the 1997 Mine-Ban Treaty and the 1997 Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials[18] in the region. In Europe, the integration process was further strengthened. The European Union, the North Atlantic Treaty Organization (NATO) and the Organization for Security and Cooperation in Europe successfully carried out a number of activities in the field of security and cooperation and thus enhanced

security and stability in Europe in general. They also addressed the continued violence in Kosovo and southern Serbia. In Asia, States member of the Association of South-East Asian Nations and other subregional organizations intensified their efforts to enhance regional and subregional security, especially through security and confidence-building measures. They also endeavoured to strengthened bilateral and multilateral cooperation in areas such as combating terrorism and curbing the illicit circulation of small arms and light weapons.

Consideration by the General Assembly

Pursuant to the recommendations of the First Committee, the General Assembly at its fifty-sixth session, on 29 November, took action on 14 draft resolutions and one decision dealing with regional disarmament issues. Resolution 56/21, entitled "Establishment of a nuclear-weapon-free zone in the region of the Middle East", had been introduced by Egypt in the First Committee. During the deliberations on the draft Pakistan had indicated its intention to support the draft resolution because it not only shared the concerns of the Arab countries in the region, but also supported the efforts towards creating a nuclear-weapon-free-zone in the Middle East. Israel for its part supported the establishment of a mutually verifiable nuclear-weapon-free-zone in the Middle East and advocated a practical step-by-step approach beginning with modest confidence-building measurers, followed by the establishment of peaceful relations, then reconciliation, and complemented by conventional and unconventional arms control measures, eventually leading to the establishment of a zone free of weapons of mass destruction. However, it continued to believe that threats against its very existence had a negative impact on the region's ability to establish such a zone.

Resolution 56/24 G, entitled "Nuclear-weapon-free southern hemisphere and adjacent areas", had been introduced by Brazil in the First Committee. France, also speaking on behalf of the United Kingdom and the United States, explained their negative vote, by noting that the draft intended to create a new zone that would cover certain international waters and, in their view, would contradict international law and would therefore be unacceptable for those delegations that were committed to the 1982 United Nations Convention on the Law of the Sea.[19]

Other resolutions adopted included resolution 56/25 A, entitled "Regional confidence-building measures: activities of the United Nations Standing Advisory Committee on Security Questions in Central Africa"; resolution 56/18, entitled "Maintenance of international security—good-neighbourliness, stability and development in South-Eastern Europe"; and resolutions 56/25 D, E and F on the United Nations regional centres for peace and disarmament in Africa, Latin America and the Caribbean, and Asia and the Pacific, respectively. Decision 56/412, entitled "Establishment of a nuclear-weapon-free zone in Central Asia", which had been introduced by Uzbekistan in the First Committee, was also adopted by the Assembly. And on 21 November, the General Assembly adopted, without reference to a Main Committee, resolution 56/7, entitled "Zone of peace and cooperation of the South Atlantic".

(*f*) Other issues

Terrorism and disarmament

The General Assembly took action on two draft resolutions on the matter, including resolution 56/24 T, entitled "Multilateral cooperation in the area of disarm-

ament and non-proliferation and global efforts against terrorism". In the discussions in the First Committee, the Sudan, speaking on behalf of the Group of African States; Jordan, speaking on behalf of the members of the League of Arab States; Belgium, on behalf of the European Union, as well as Cuba and Venezuela all supported the draft resolution. The Republic of Korea also added that both traditional and non-traditional approaches were needed in these efforts.

Information security

The subject has been dealt with by the General Assembly since 1998. At the current session, the delegation of the Russian Federation at the First Committee submitted the draft which was subsequently adopted on 29 November as resolution 56/19, entitled "Developments in the field of information and telecommunications in the context of international security".

Role of science and technology in the context of international security and disarmament

In recent years, major progress had been achieved in applying the latest advancements in science and technology, particularly information technologies and communications, to both the civilian and military sectors. Concerns had been expressed that military application of those advances could contribute significantly to the refinement and upgrading of advanced weapons systems, including weapons of mass destruction. In that regard, the Secretary-General's Advisory Board on Disarmament Matters considered the issue of the "revolution in military affairs" during its 2001 sessions. While recognizing the positive effect that the revolution in military affairs might have on disarmament and arms control in improving transparency, building confidence, promoting verification, deterring future wars and limiting civilian casualties, the Board also expressed its concern that the revolution might pose many potential dangers, including a rise in the frequency of wars. The challenge of the revolution in military affairs for future disarmament efforts was how to take advantage of the positive features of the revolution while minimizing the risks. The General Assembly dealt with the matter in its resolution 56/20 of 29 November 2001, entitled "Role of science and technology in the context of international security and disarmament", the draft of which had been introduced by India in the First Committee.

Depleted uranium

As a result of questions relating to the use of depleted uranium weapons raised by a number of international and regional organizations and by States in connection with the Gulf war and the military intervention by NATO in Yugoslavia, a UNEP mission was organized and samples were collected at various sites and analysed, and a final report issued.[20] Iraq had also introduced a draft resolution on the subject, which was narrowly adopted by the First Committee, but the General Assembly did not adopt it. The United States considered it redundant for the Assembly to deal with this item, since UNEP and other international organizations had already conducted their own studies. Moreover, both the United States and New Zealand did not agree with the draft's implication that depleted uranium was a weapon of mass destruction. New Zealand noted further that the United Nations Department for Disarmament Affairs was not the right body to carry out such a study, since technical bodies

such as IAEA, WHO and UNEP were better placed to perform such studies and in fact had already done so.

Relationship between disarmament and development

The question of the relationship between disarmament and development remained controversial. The General Assembly adopted resolution 56/24 E on the subject based on a draft introduced in the First Committee by South Africa, on behalf also of the members of the Movement of Non-Aligned Countries. During the deliberations, the United States had not joined in the consensus on the draft resolution because it believed that disarmament and development were two distinct issues that could not be linked. Although Belgium, speaking on behalf of a number of countries that had joined the consensus, recognized that considerable benefits could accrue from disarmament, it stated that there was nevertheless no simple automatic link between the European Union's deep commitments to cooperation for economic and social development and the savings that could accrue in other fields, including disarmament.

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2. OTHER POLITICAL AND SECURITY QUESTIONS

(*a*) Membership in the United Nations

During 2001, no State joined the United Nations. The number of Member States remained at 189.

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

The Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space held its fortieth session at the United Nations Office at Vienna from 2 to 12 April 2001.[21] During the session, the Chairman reported on the current status of the international treaties governing the use of outer space.[22] Moreover, various international organizations, e.g., UNESCO, ICAO, presented written or oral reports on their activities relating to space law.[23]

Regarding the agenda 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 Working Group on the topic agreed that the questionnaire on aerospace objects and the analysis prepared by the United Nations Secretariat,[24] which could serve as a basis for future consideration of the subject, should be placed on the website of the United Nations Office for Outer Space Affairs and that a direct link to the documents should be established from its home page (www.oosa.unvienna.org).

The Subcommittee noted that the draft Unidroit Convention on international interests in mobile equipment, together with the draft protocol thereto on matters specific to aircraft equipment, was scheduled to be presented for adoption by a diplomatic conference to be held in South Africa in October/November 2001. The Subcommittee agreed to the establishment of an ad hoc consultative mechanism to review the issues relating to this item, in accordance with a proposal by Belgium.

In connection with the item on the review of the concept of the "launching State", as contained in the Liability Convention and the Registration Convention as applied by States and international organizations, the representative of Australia presented an overview of the policy of the Government of Australia aimed at facilitating commercial space programmes consistent with Australia's obligations under the five United Nations treaties on outer space. Additional presentations were made within the Working Group on the item.[25]

The Committee on the Peaceful Uses of Outer Space, at its forty-fourth session, held at Vienna from 6 to 15 June 2001,[26] took note of the report of the Legal Subcommittee, which indicated a revitalization of the work of that body following the revision of its agenda structure in 1999. The Committee further agreed upon the draft provisional agenda for the forty-first session of the Legal Subcommittee.

During the session, the Committee's attention was drawn to the fact that 2001 marked the fifteenth anniversary of the adoption of the Principles Relating to Remote Sensing of the Earth from Outer Space and the fifth anniversary of the adoption of the Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States, Taking into Particular Account the Needs of Developing Countries.[27] Moreover, the Committee was informed that the 1998 Intergovernmental Agreement for the International Space Station (ISS)[28] had entered into force on 27 March, in accordance with article 25 of the Agreement. In addition, as called for in the Agreement, the ISS partner States had agreed to a crew code of conduct, which covered such topics as the chain of command on-orbit, the relationship between ground and on-orbit management, standards for work and activities in space, and the authority of the commander.

Consideration by the General Assembly

At its fifty-sixth session, the General Assembly, on the recommendation of the Special Political and Decolonization Committee (Fourth Committee), adopted without a vote resolution 56/51 of 10 December 2001, entitled "International cooperation in the peaceful uses of outer space", in which it noted that the Legal Subcommittee, at its forty-first session, would submit its proposals to the Committee for new items to be considered by the Subcommittee at its forty-second session in 2003. The Assembly further noted that the Committee on the Peaceful Uses of Outer Space would invite interested member States to designate experts to identify which aspects of the report on the ethics of space policy of the World Commission on the Ethics of Scientific Knowledge and Technology of UNESCO might need to be studied by the Committee and to draft a report, in consultation with other international organizations and in close liaison with the World Commission, with a view to making a presentation on the matter at the forty-second session of the Legal Subcommittee, under the agenda item entitled "Information on the activities of international organizations relating to space law".

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

The General Assembly, at its fifty-sixth session, on the recommendation of the Special Political and Decolonization Committee (Fourth Committee), adopted, without a vote, resolution 56/225 of 24 December 2001, in which it welcomed the

report of the Special Committee on Peacekeeping Operations[29] and endorsed the proposals, recommendations and conclusions of the Special Committee, as contained in paragraphs 33 to 136 of its report.

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

(*a*) Twenty-first session of the Governing Council of the United Nations Environment Programme/Global Ministerial Environment Forum[30]

The session was held at UNEP headquarters, Nairobi, from 5 to 9 February 2001. The Governing Council adopted a number of decisions, including decision 21/2, "Enhancing the role of the United Nations Environment Programme on forest-related issues"; decision 21/3, "Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade"; decision 21/4, "Convention for implementing international action on certain persistent organic pollutants"; decision 21/5, "Mercury assessment"; decision 21/8, "Biosafety"; decision 21/12, "Coral reefs"; decision 21/23, "The Programme for the Development and Periodic Review of Environmental Law for the First Decade of the Twenty-first Century"; decision 21/26, "Status of international conventions and protocols in the field of the environment"; and decision 21/27, "Compliance with and enforcement of multilateral environmental agreements".

Consideration by the General Assembly

At its fifty-sixth session, the General Assembly, on 21 December 2001, adopted a number of resolutions and decisions on the recommendation of the Second Committee. Among them was resolution 56/192, adopted without a vote, on the status of preparations for the International Year of Freshwater, 2003, in which the Assembly took note of the report of the Secretary-General.[31]

The General Assembly also adopted resolution 56/196 on implementation of the 1994 United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa,[32] in which the Assembly took note of the report of the Secretary-General;[33] resolution 56/197 on the 1992 Convention on Biological Diversity,[34] in which the Assembly took note of the report of the Executive Secretary of the Convention, as submitted by the Secretary-General to the General Assembly at its fifty-sixth session[35] and called upon parties to the Convention to become parties to the Cartagena Protocol on Biosafety;[36] and resolution 56/199, entitled "Protection of global climate for present and future generations of mankind", in which the Assembly recalled the United Nations Millennium Declaration,[37] in which heads of State and Government had resolved to make every effort to ensure the entry into force of the 1997 Kyoto Protocol[38] to the 1992 United Nations Framework Convention on Climate Change,[39] and took note of the Marrakesh Accords,[40] adopted by the Conference of the Parties to the Climate Change and Convention complementing the Bonn Agreements[41] on the implementation of the Buenos Aires Plan of Action,[42] paving the way for the timely entry into force of the Kyoto Protocol.

Also adopted was resolution 56/200, entitled "Promotion of new and renewable sources of energy, including the implementation of the World Solar Programme 1996-2005", in which the General Assembly took note with appreciation of the report of the Secretary-General concerning concrete action being taken to implement General Assembly resolutions 53/7, 54/215 and 55/205,[43] and welcomed, in particular, the attempt therein to analyse and discuss the obstacles and constraints impeding the promotion of new and renewable sources of energy and options for action to overcome them. The Assembly also adopted decision 56/439, entitled "Environment and sustainable development", in which it took note of the report of the Second Committee;[44] as well as decision 56/440, in which it took note of the report of the Secretary-General on products harmful to health and the environment.[45]

(*b*) Economic issues

On the recommendation of the Second Committee, the General Assembly adopted a number of resolutions and decisions on economic issues, including resolution 56/178, entitled "International trade and development"; resolution 56/179, entitled "Unilateral economic measures as a means of political and economic coercion against developing countries"; resolution 56/181, entitled "Towards a strengthened and stable international financial architecture responsive to the priorities of growth and development, especially in developing countries, and to the promotion of economic and social equity"; resolution 56/185, entitled "Business and development"; resolution 56/187, entitled "Second Industrial Development Decade for Africa (1993-2002)"; resolution 56/188, entitled "Women in development"; resolution 56/202, entitled "Economic and technical cooperation among developing countries"; and resolution 56/207, entitled "Implementation of the first United Nations Decade for the Eradication of Poverty (1997-2006), including the proposal to establish a world solidarity fund for poverty eradication". The Assembly also adopted resolution 56/212, entitled "Global Code of Ethics for Tourism", in which it took note with interest of the Global Code of Ethics for Tourism adopted at the thirteenth session of the General Assembly of the World Tourism Organization,[46] outlining principles to guide tourism development and to serve as a frame of reference for the different stakeholders in the tourism sector, with the objective of minimizing the negative impact of tourism on environment and on cultural heritage while maximizing the benefits of tourism in promoting sustainable development and poverty alleviation as well as understanding among nations. Furthermore, the Assembly adopted decision 56/435 on macroeconomic policy questions, taking note of the report of the Second Committee,[47] and decision 56/436 on sustainable development and international economic cooperation, also taking note of the report of the Second Committee.[48]

(*c*) Crime prevention

At its fifty-sixth session, on 12 September 2001, the General Assembly, without reference to a Main Committee, adopted without a vote resolution 56/1, entitled "Condemnation of terrorist attacks in the United States of America", in which it strongly condemned the heinous acts of terrorism which had caused enormous loss of human life, destruction and damage in the cities of New York, host city of the United Nations, and Washington, D.C., and in Pennsylvania, and urgently called for international cooperation to bring to justice the perpetrators, organizers and sponsors of the outrages of 11 September 2001. The Assembly also urgently called for international cooperation to prevent and eradicate acts of terrorism, and stressed that

those responsible for aiding, supporting or harbouring the perpetrators, organizers and sponsors of such acts would be held accountable.

On the recommendation of the Second Committee, the General Assembly, on 21 December 2001, adopted without a vote resolution 56/186, entitled "Preventing and combating corrupt practices and transfer of funds of illicit origin and returning such funds to the countries of origin", in which it took note of the report of the Secretary-General.[49]

On the recommendation of the Third Committee, the General Assembly on 19 December adopted a number of resolutions on crime prevention, including resolution 56/119, entitled "Role, function, periodicity and duration of the United Nations congresses on the prevention of crime and the treatment of offenders"; resolution 56/120, entitled "Action against transnational organized crime: assistance to States in capacity-building with a view to facilitating the implementation of the 2000 United Nations Convention against Transnational Organized Crime and the Protocols thereto";[50] resolution 56/121, entitled "Combating the criminal misuse of information technologies"; resolution 56/122, entitled "United Nations African Institute for the Prevention of Crime and the Treatment of Offenders"; and resolution 56/123, entitled "Strengthening the United Nations Crime Prevention and Criminal Justice Programme, in particular its technical cooperation capacity".

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

On 19 December 2001, the General Assembly, on the recommendation of the Third Committee, adopted without a vote resolution 56/124, entitled "International cooperation against the world drug problem", in which it reaffirmed that countering the world drug problem was a common and shared responsibility which must be addressed in a multilateral setting, requiring an integrated and balanced approach, and must be carried out in full conformity with the purposes and principles of the Charter of the United Nations and international law, and in particular with full respect for the sovereignty and territorial integrity of States, the principle of non-intervention in the internal affairs of States and all human rights and fundamental freedoms; emphasized the role of the Commission on Narcotic Drugs as the principal United Nations policy-making body on drug control issues and as the governing body of the United Nations International Drug Control Programme; 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,[51] the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control,[52] the Global Programme of Action,[53] and the outcome of the special session of the General Assembly devoted to countering the world drug problem.

(*e*) Human rights issues

Status and implementation of international instruments

In 2001, three more States became party to the 1966 International Covenant on Economic, Social and Cultural Rights,[54] bringing the total number of States parties to 145; one more State became a party to the 1966 International Covenant on Civil and Political Rights,[55] bringing the total number of States parties to 147; three more States became party to the 1966 Optional Protocol to the International Covenant on Civil and Political Rights,[56] bringing the total number of States parties to 102; and two more States became party to the 1989 Second Optional Protocol to the International

Covenant on Civil and Political Rights, aiming at the abolition of the death penalty,[57] bringing the total number of States parties to 46.

At its fifty-sixth session, on 19 December 2001, the General Assembly, on the recommendation of the Third Committee, adopted without a vote resolution 56/144, entitled "International Covenants on Human Rights", in which it took note with appreciation of the annual reports of the Human Rights Committee submitted to it at its fifty-fifth and fifty-sixth sessions.[58] In the same resolution, the Assembly encouraged States parties to consider limiting the extent of any reservations that they lodged to the International Covenants, to formulate any reservations as precisely and narrowly as possible and to ensure that no reservation was incompatible with the object and purpose of the relevant treaty; and also urged States parties to fulfil in good time such reporting obligations under the International Covenants as might be requested and to make use in their reports of gender-disaggregated data, and stressed the importance of taking fully into account a gender perspective in the implementation of the Covenants at the national level.

On the same date, also on the recommendation of the Third Committee, the General Assembly adopted decision 56/431, entitled "Report of the United Nations High Commissioner for Human Rights", in which it took note of the related report of the Third Committee.[59]

International Convention on the Elimination of All Forms of Racial Discrimination of 1966[60]

During 2001, five more States became party to the Convention, bringing the total number of States parties to 162. Two more States became party to the 1992 Amendment to article 8 of the Convention,[61] bringing the total number of States parties to 32.

Convention on the Elimination of All Forms of Discrimination against Women of 1979[62]

During 2001, three more States became party to the Convention, bringing the total number of States parties to 168. Two more States became party to the 1995 Amendment to article 20, paragraph 1 of the Convention,[63] bringing the total number of States parties to 26. And 13 additional States became party to the 1999 Optional Protocol to the Convention,[64] bringing the total number of States parties to 28.

At its fifty-sixth session, on 24 December 2001, the General Assembly, on the recommendation of the Third Committee, adopted without a vote resolution 56/229, entitled "Convention on the Elimination of All Forms of Discrimination against Women". In the resolution, the Assembly, having considered the report of the Committee on the Elimination of Discrimination against Women on its twenty-fourth and twenty-fifty sessions,[65] welcomed the report of the Secretary-General on the status of the Convention;[66] expressed disappointment that universal ratification of the Convention had not been achieved by 2000; and emphasized the importance of full compliance by States parties with their obligations under the Convention and the Optional Protocol thereto.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984[67]

In 2001, five more States became party to the Convention, bringing the total number of States parties to 127. The number of States parties to the 1992 Amendments to articles 17(7) and 18(5) of the Convention[68] remained at 23.

At its fifty-sixth session, on 19 December, the General Assembly, on the recommendation of the Third Committee, adopted without a vote resolution 56/143, entitled "Torture and other cruel, inhuman or degrading treatment or punishment", in which the Assembly recalled the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[69] and strongly encouraged Governments to reflect upon the Principles as a useful tool in efforts to combat torture; welcomed the work of the Committee against Torture and took note of the report of the Committee,[70] submitted in accordance with article 24 of the Convention; and took note with appreciation of the interim report of the Special Rapporteur of the Commission on Human Rights on the question of torture.[71]

Convention on the Rights of the Child of 1989[72]

In 2001, one more State became a party to the Convention, bringing the total number of States parties to 191. Sixteen more States became party to the 1995 Amendment to article 43(2) of the Convention,[73] bringing the total number of States parties to 113. Ten more States became party to the 2000 Optional Protocol to the Convention on the involvement of children in armed conflict,[74] bringing the total number of States parties to 13. And 15 additional States became party to the 2000 Optional Protocol to the Convention on the sale of children, child prostitution and child pornography,[75] bringing the total number of States parties to 16.

At its fifty-sixth session, on 19 December 2001, the General Assembly, on the recommendation of the Third Committee, adopted without a vote resolution 56/138, entitled "The rights of the child", in which it took note with appreciation of the report of the Secretary-General entitled "We the children: end-decade review of the follow-up to the World Summit for Children"[76] and the reports of the Secretary-General on the status of the Convention[77] and on children and armed conflict,[78] as well as the report of the Special Representative of the Secretary-General for Children and Armed Conflict.[79] In the same resolution, the Assembly welcomed the convening of the Second World Congress against Commercial Sexual Exploitation of Children at Yokohama, Japan, from 17 to 20 December 2001, and the regional consultative meetings for its preparation, and invited Member States and observers to ensure their participation in the Congress at a high political level. On the same date, also on the recommendation of the Third Committee, the Assembly adopted without a vote resolution 56/139 entitled "The girl child", in which it stressed the need for full and urgent implementation of the rights of the girl child as guaranteed to her under all human rights instruments, including the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, and welcomed the United Nations Girls' Education Initiative launched by the Secretary-General at the World Education Forum held at Dakar in April 2000.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990[80]

In 2001, two more States became party to the Convention, bringing the total number of States parties to 17.

At its fifty-sixth session, on 19 December 2001, the General Assembly, on the recommendation of the Third Committee, adopted resolution 56/145 on the Convention. In the resolution, the Assembly requested the Secretary-General to provide all the facilities and assistance necessary for the promotion of the Convention through

the World Public Information Campaign on Human Rights and the programme of advisory services in the field of human rights, and took note of the report of the Secretary-General.[81] On the same date, also on the recommendation of the Third Committee, the Assembly adopted without a vote resolution 56/131, entitled "Violence against women migrant workers", in which it took note of the report of the Secretary-General,[82] as well as of the reports of the Special Rapporteur of the Commission on Human Rights on the human rights of migrants[83] and of the Special Rapporteur of the Commission on Human Rights on violence against women, its causes and consequences,[84] with regard to violence against women migrant workers, and encouraged them to continue to address the issue of violence against women migrant workers and their human rights, in particular the problem of gender-based violence and of discrimination, and trafficking in women.

Other human rights issues

The General Assembly, on the recommendation of the Third Committee, adopted a number of other resolutions and decisions in the area of human rights at its fifty-sixth session, all of them on 19 December. Among these was resolution 56/141, adopted without a vote, in which the Assembly reaffirmed that the universal realization of the right of all peoples, including those under colonial, foreign and alien domination, to self-determination was a fundamental condition for the effective guarantee and observance of human rights and for the preservation and promotion of such rights, and requested the Commission on Human Rights to continue to give special attention to the violation of human rights, especially the right to self-determination, resulting from foreign military intervention, aggression or occupation. In its resolution 56/146, which it adopted by a recorded vote of 113 to 47, with 5 abstentions, the Assembly encouraged States parties to the United Nations human rights instruments to establish quota distribution systems by geographical region for the election of the members of the treaty bodies.

Furthermore, the General Assembly adopted by a recorded vote of 99 to 10, with 59 abstentions, resolution 56/154, entitled "Respect for the principles of national sovereignty and non-interference in the internal affairs of States in electoral processes as an important element for the promotion and protection of human rights", in which it reaffirmed that all peoples had the right to self-determination, by virtue of which they freely determined their political status and freely pursued their economic, social and cultural development, and that every State had the duty to respect that right, in accordance with the provisions of the Charter of the United Nations; reiterated that periodic, fair and free elections were important elements for the promotion and protection of human rights; reaffirmed the right of peoples to determine methods and to establish institutions regarding electoral processes and that, consequently, States should ensure the necessary mechanisms and means to facilitate full and effective popular participation in those processes; and also reaffirmed that United Nations electoral assistance was provided at the specific request of the Member State concerned. In addition, the Assembly adopted by a recorded vote of 162 to none, with 8 abstentions, resolution 56/159, entitled "Strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization", in which, recalling the Universal Declaration of Human Rights,[85] and taking note with interest of Commission of Human Rights resolutions 2001/41 of 23 April 2001 and 2001/72 of 25 April 2001,[86] the Assembly welcomed the report of the Secretary-General,[87] and commended the electoral assistance provided upon

request to Member States by the United Nations, and requested that such assistance continue on a case-by-case basis in accordance with the evolving needs of requesting countries to develop, improve and refine their electoral institutions and processes, recognizing that the fundamental responsibility of organizing free and fair elections lay with Governments.

The General Assembly also adopted, by a recorded vote of 102 to none, with 69 abstentions, resolution 56/160, entitled "Human rights and terrorism", in which it welcomed the report of the Secretary-General.[88] The Assembly furthermore adopted without a vote resolution 56/161, entitled; "Human rights in the administration of justice", in which it reaffirmed the importance of the full and effective implementation of all United Nations standards on human rights in the administration of justice.

(*f*) Refugee issues

Status of international instruments

During 2001, two more States became parties to the 1951 Convention Relating to the Status of Refugees,[89] bringing the total number of States parties to 138; two more States became parties to the 1967 Protocol Relating to the Status of Refugees,[90] bringing the total number of States parties to 138; two more States became party to the 1954 Convention relating to the Status of Stateless Persons,[91] bringing the total number of States parties to 54; and three more States became parties to the 1961 Convention on the Reduction of Statelessness,[92] bringing the total number of States parties to 26.

Consideration by the General Assembly

At its fifty-sixth session, on 19 December 2001, the General Assembly, on the recommendation of the Third Committee, adopted without a vote resolution 56/136, entitled "Assistance to unaccompanied refugee minors", in which it took note of the report of the Secretary-General,[93] and expressed its deep concern at the continuing plight of unaccompanied refugee minors and emphasized once again the urgent need for their early identification and for timely, detailed and accurate information on their number and whereabouts. And in its resolution 56/137 of the same date, entitled "Office of the United Nations High Commissioner for Refugees", the Assembly endorsed the report of the Executive Committee of the Programme of the High Commissioner on the work of its fifty-second session.[94]

(*g*) Ad hoc Tribunals for the Former Yugoslavia and for Rwanda

On 26 November 2001, the General Assembly, without reference to a Main Committee, adopted decisions 56/408 and 56/409, by which it took note, respectively, of the eighth 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[95] and the sixth 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.[96]

(*h*) Cultural issues

On 21 November 2001, the General Assembly, without reference to a Main Committee, adopted without a vote resolution 56/8, in which it proclaimed 2002 as the United Nations Year for Cultural Heritage and invited UNESCO to serve as the lead agency for the year. In its resolution 56/97 of 14 December 2001, adopted also without reference to a Main Committee and also without a vote, the Assembly welcomed the report of the Secretary-General submitted in cooperation with the Director-General of UNESCO[97] and commended UNESCO and the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation on the work they had accomplished, in particular through the promotion of bilateral negotiations, for the return or restitution of cultural property, the preparation of inventories of movable cultural property and the implementation of the Object-ID standard related thereto, as well as for the reduction of illicit traffic in cultural property and the dissemination of information to the public. The Assembly also reaffirmed the importance of the provisions of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict.[98]

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4. LAW OF THE SEA

Status of international instruments

In 2001, two more States became party to the 1982 United Nations Convention on the Law of the Sea,[99] bringing the total number of States parties to 139. Three more States became party to the 1994 Agreement relating to the implementation of Part XI of the Convention,[100] bringing the total number of States parties to 103. Four more States became party to the 1995 Agreement for the implementation of the provisions of the Law of the Sea Convention relating to the conservation and management of straddling fish stocks and highly migratory fish stocks,[101] bringing the total number of States parties to 31. Six additional States became party to the 1997 Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea,[102] bringing the total number of States parties to 10. And three further States became parties to the 1998 Protocol on the Privileges and Immunities of the International Seabed Authority,[103] bringing the total number of States parties to 6.

Report of the Secretary-General[104]

The extensive report covered many aspects of the oceans and the law of the sea during 2001. In an effort to make information on the quality of ships and their operators more accessible, the Commission of the European Communities and the maritime authorities of a number of countries in 2001 had inaugurated an information system known as EQUASIS, with the aim of collecting existing safety-related information from both public and private sources and making it available on the Internet. A given ship's history as presented on the EQUASIS

website contained information on its registry, classification and Protection and Indemnity (P&I) cover, port State control details and any deficiencies discovered, as well as manning information.

The report also covered criminal activities at sea, including piracy and armed robbery against ships, terrorism, smuggling of migrants, and illicit traffic in persons, narcotic drugs and small arms, all of which are reported as on the rise. Crimes might also include violations of international rules dealing with the environment, such as illegal dumping, illegal discharge of pollutants from vessels or the violation of rules regulating the exploitation of the living marine resources, such as illegal fishing. Recommended actions to prevent such crimes were included in the report.

It was further noted in the report that under Part XV, section 1, of the 1982 United Nations Convention on the Law of the Sea States parties were required to settle their disputes concerning the interpretation or application of the Convention by peaceful means, in accordance with Article 2, paragraph 3, of the Charter of the United Nations. However, when States parties involved in a dispute had not reached a settlement by peaceful means of their own choice, they were obliged to resort to the compulsory dispute settlement procedures provided for under the Convention (Part XV, section 2). Details of the cases relating to law of the sea issues can be found at the website of the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the United Nations Secretariat: www.un.org/Depts/los.

Consideration by the General Assembly

At its fifty-sixth session, on 28 November 2001, the General Assembly, without reference to a Main Committee, adopted by a recorded vote of 121 to 1, with 4 abstentions, resolution 56/12, entitled "Oceans and the law of the sea". In the resolution, the Assembly called upon all States that had not done so to become parties to the 1982 Convention and the 1994 Agreement relating to the implementation of Part XI of the Convention, providing the regime to be applied to the Area (the international seabed area) and its resources as defined in the Convention. The Assembly also noted with satisfaction the continued contribution of the International Tribunal for the Law of the Sea to the peaceful settlement of disputes in accordance with Part XV of the Convention, underlined its important role and authority concerning the interpretation or application of the Convention and the Agreement, encouraged States parties to the Convention to consider making a written declaration choosing from the means set out in article 287 for the settlement of disputes concerning the interpretation or application of the Convention and the Agreement, and invited States to note the provisions of annexes V, VI, VII and VIII to the Convention concerning, respectively, conciliation, the Tribunal, arbitration and special arbitration. The Assembly furthermore noted with satisfaction the ongoing work of the International Seabed Authority, including the issuance of contracts for exploration in accordance with the Convention, the Agreement and the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area. Moreover, the Assembly urged all States and relevant international bodies to prevent and combat piracy and armed robbery at sea by adopting measures, including assisting with capacity-building, for prevention, for reporting and investigating incidents, and for bringing the alleged perpetrators to justice, in accordance with international law, in particular through training seafarers, port staff and enforcement personnel, providing enforcement vessels and equipment and guarding against fraudulent ship registration.

On the same date, also without reference to a Main Committee, the General Assembly adopted without a vote a separate resolution, 56/13, on the 1995 Agreement for the implementation of the provisions of the Convention relating to the conservation and management of straddling fish stocks and highly migratory fish stocks.

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5. INTERNATIONAL COURT OF JUSTICE[105]

Cases before the Court[106]

Contentious cases before the full Court

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

At a public sitting held on 16 March 2001, the Court delivered its judgment, a summary of which is given below, followed by the text of the operative paragraph:

History of the proceedings and submissions of the Parties (paras. 1-34)

The Court first recalls the history of the proceedings and the submissions of the Parties as set out hereabove. (For the delimitation lines proposed by each of the Parties, see sketch-map No. 2 of the judgment, reproduced below.)

Geographical setting (para. 35)

The Court notes that the State of Qatar and the State of Bahrain are both located in the southern part of the Arabian/Persian Gulf (hereinafter referred to as "the Gulf"), almost halfway between the mouth of the Shatt al Arab, to the north-west, and the Strait of Hormuz, at the Gulf's eastern end to the north of Oman. The mainland to the west and south of the main island of Bahrain and to the south of the Qatar peninsula is part of the Kingdom of Saudi Arabia. The mainland on the northern shore of the Gulf is part of Iran.

The Qatar peninsula projects northward into the Gulf, on the west from the bay called Dawhat Salwah, and on the east from the region lying to the south of Khor al-Udaid. The capital of the State of Qatar, Doha, is situated on the eastern coast of the peninsula.

Bahrain is composed of a number of islands, islets and shoals situated off the eastern and western coasts of its main island, which is also called al-Awal Island. The capital of the State of Bahrain, Manama, is situated in the north-eastern part of al-Awal Island.

Zubarah is located on the north-west coast of the Qatar peninsula, opposite the main island of Bahrain.

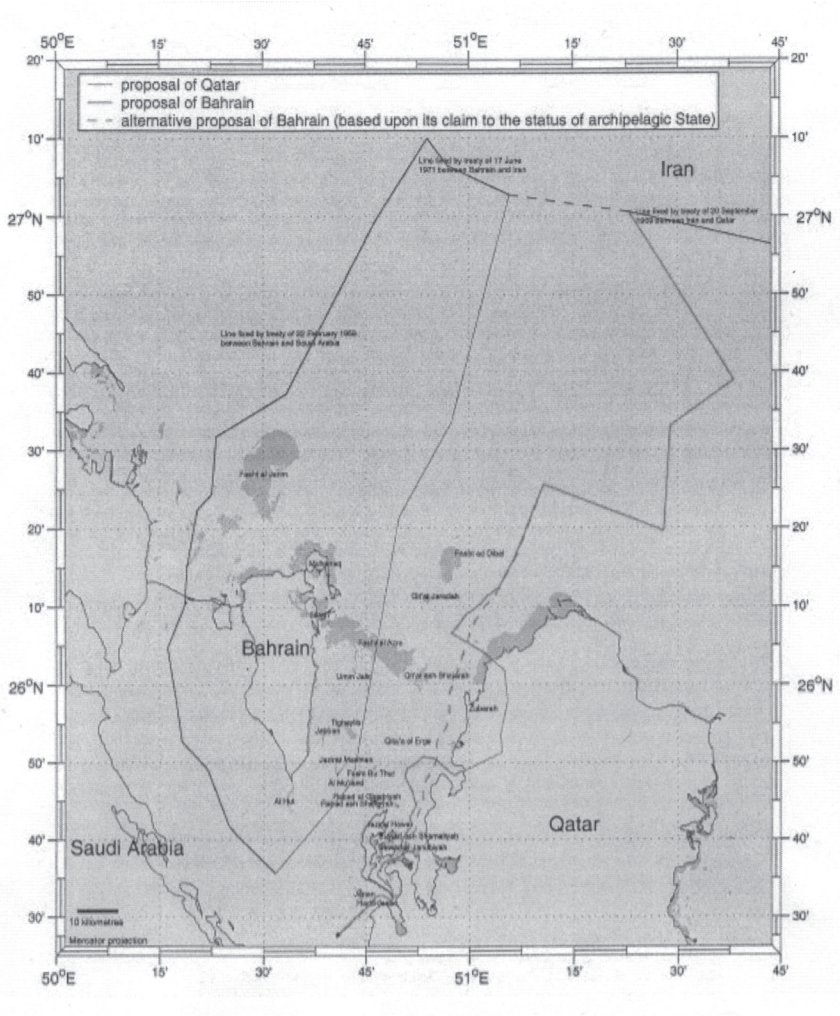
The Hawar Islands are located in the immediate vicinity of the central part of the west coast of the Qatar peninsula, to the south-east of the main island of Bahrain and at a distance of approximately 10 nautical miles from the latter.

Janan is located off the south-western tip of Hawar Island proper.

Fasht ad Dibal and Qit'at Jaradah are two maritime features located off the north-western coast of the Qatar peninsula and to the north-east of the main island of Bahrain.

Sketch-map No. 2

LINES PROPOSED BY QATAR AND BAHRAIN



This sketch-map, on which maritime features are shown in simplified form, has been prepared for illustrative purposes only. It is without prejudice to the nature of certain of these features.

Sources: Submissions of the Parties; Memorial of Qatar, vol. 17, map 24; Memorial of Bahrain, vol. 17, maps 10, 11, 13 and 15.

Historical context (paras. 36-69)

The Court then gives a brief account of the complex history which forms the background to the dispute between the Parties (only parts of which are referred to below).

Navigation in the Gulf was traditionally in the hands of the inhabitants of the region. From the beginning of the sixteenth century, European Powers began to show interest in the area, which lay along one of the trading routes with India. Portugal's virtual monopoly of trade was not challenged until the beginning of the seventeenth century. Great Britain was then anxious to consolidate its presence in the Gulf to protect the growing commercial interests of the East India Company.

Between 1797 and 1819 Great Britain dispatched numerous punitive expeditions in response to acts of plunder and piracy by Arab tribes led by the Qawasim against British and local ships. In 1819, Great Britain took control of Ras al Khaimah, headquarters of the Qawasim, and signed separate agreements with the various sheikhs of the region. These sheikhs undertook to enter into a General Treaty of Peace. By this Treaty, signed in January 1820, these sheikhs and chiefs undertook on behalf of themselves and their subjects, inter alia, to abstain for the future from plunder and piracy. It was only towards the end of the nineteenth century that Great Britain would adopt a general policy of protection in the Gulf, concluding "exclusive agreements" with most sheikhdoms, including those of Bahrain, Abu Dhabi, Sharjah and Dubai. Representation of British interests in the region was entrusted to a British Political Resident in the Gulf, installed in Bushire (Persia), to whom British Political Agents were subsequently subordinated in various sheikhdoms with which Great Britain had concluded agreements.

On 31 May 1861, the British Government signed a "Perpetual treaty of peace and friendship" with Sheikh Mahomed bin Khalifah, referred to in the treaty as independent Ruler of Bahrain. Under this treaty, Bahrain undertook, inter alia, to refrain from all maritime aggression of every description, while Great Britain undertook to provide Bahrain with the necessary support in the maintenance of security of its possessions against aggression. There was no provision in this treaty defining the extent of these possessions.

Following hostilities on the Qatar peninsula in 1867, the British Political Resident in the Gulf approached Sheikh Ali bin Khalifah, Chief of Bahrain, and Sheikh Mohamed Al-Thani, Chief of Qatar, and, on 6 and 12 September 1868 respectively, occasioned each to sign an agreement with Great Britain. By those agreements, the Chief of Bahrain recognized, inter alia, that certain acts of piracy had been committed by Mahomed bin Khalifah, his predecessor, and, "in view of preserving the peace, at sea, and precluding the occurrence of further disturbance and in order to keep the Political Resident informed of what happens", he promised to appoint an agent with the Political Resident; for his part, the Chief of Qatar undertook, inter alia, to return to and reside peacefully in Doha, not to put to sea with hostile intention, and, in the event of disputes or misunderstanding arising, invariably to refer to the Political Resident. According to Bahrain, the "events of 1867-1868" demonstrate that Qatar was not independent from Bahrain. According to Qatar, on the contrary, the 1868 Agreements formally recognized for the first time the separate identity of Qatar.

While Great Britain had become the dominant maritime Power in the Gulf by that time, the Ottoman Empire, for its part, had re-established its authority over extensive areas of the land on the southern side of the Gulf. In the years following the

arrival of the Ottomans on the Qatar peninsula. Great Britain further increased its influence over Bahrain. On 29 July 1913, an Anglo-Ottoman "Convention relating to the Persian Gulf and surrounding territories" was signed, but it was never ratified. Section II of the Convention dealt with Qatar. Article 11 described the course of the line which, according to the agreement between the parties, was to separate the Ottoman *Sanjak* of Nejd from the "peninsula of al-Qatar". Qatar points out that the Ottomans and the British had also signed, on 9 March 1914, a treaty concerning the frontiers of Aden, which was ratified that same year and whose article III provided that the line separating Qatar from the *Sanjak* of Nejd would be "in accordance with article 11 of the Anglo-Ottoman Convention of 29 July 1913 relating to the Persian Gulf and the surrounding territories". Under a treaty concluded on 3 November 1916 between Great Britain and the Sheikh of Qatar, the Sheikh of Qatar bound himself, inter alia, not to "have relations nor correspond with, nor receive the agent of, any other Power without the consent of the High British Government"; nor, without such consent, to cede to any other Power or its subjects, land; nor, without such consent, to grant any monopolies or concessions. In return, the British Government undertook to protect the Sheikh of Qatar and to grant its "good offices" should the Sheikh or his subjects be assailed by land within the territories of Qatar. There was no provision in this treaty defining the extent of those territories.

On 29 April 1936, the representative of Petroleum Concessions Ltd. wrote to the British India Office, which had responsibility for relations with the protected States in the Gulf, drawing its attention to a Qatar oil concession of 17 May 1935, and, observing that the Ruler of Bahrain, in his negotiations with Petroleum Concessions Ltd., had laid claim to Hawar, he accordingly enquired to which of the two Sheikhdoms (Bahrain or Qatar) Hawar belonged. On 14 July 1936, Petroleum Concessions Ltd. was informed by the India Office that it appeared to the British Government that Hawar belonged to the Sheikh of Bahrain. The content of those communications was not conveyed to the Sheikh of Qatar.

In 1937, Qatar attempted to impose taxation on the Naim tribe inhabiting the Zubarah region; Bahrain opposed this as it claimed rights over the region. Relations between Qatar and Bahrain deteriorated. Negotiations between the two States started in spring of 1937 and were broken off in July of that year.

Qatar alleges that Bahrain clandestinely and illegally occupied the Hawar Islands in 1937. Bahrain maintains that its Ruler was simply performing legitimate acts of continuing administration in his own territory. By a letter dated 10 May 1938, the Ruler of Qatar protested to the British Government against what he called "the irregular action taken by Bahrain against Qatar", to which he had already referred in February 1938 in a conversation in Doha with the British Political Agent in Bahrain. On 20 May 1938, the latter wrote to the Ruler of Qatar, inviting him to state his case on Hawar at the earliest possible moment. The Ruler of Qatar responded by a letter dated 27 May 1938. Some months later, on 3 January 1939, Bahrain submitted a counterclaim. In a letter of 30 March 1939, the Ruler of Qatar presented his comments on Bahrain's counterclaim to the British Political Agent in Bahrain. The Rulers of Qatar and Bahrain were informed on 11 July 1939 that the British Government had decided that the Hawar Islands belonged to Bahrain.

In May 1946, the Bahrain Petroleum Company Ltd. sought permission to drill in certain areas of the continental shelf, some of which the British considered might belong to Qatar. The British Government decided that such permission could not be granted until there had been a division of the seabed between Bahrain and Qatar. It

studied the matter and, on 23 December 1947, the British Political Agent in Bahrain sent the Rulers of Qatar and Bahrain two letters, in the same terms, showing the line which the British Government considered divided "in accordance with equitable principles the seabed aforesaid". The letter indicated further that the Sheikh of Bahrain had sovereign rights in the areas of the Dibal and Jaradah shoals (which should not be considered to be islands having territorial waters), as well as over the islands Hawar group while noting that Janan Island was not regarded as being included in the islands of the Hawar group.

In 1971, Qatar and Bahrain ceased to be British protected States. On 21 September 1971, they were both admitted to the United Nations.

Beginning in 1976, mediation, also referred to as "good offices", was conducted by the King of Saudi Arabia with the agreement of the Amirs of Bahrain and Qatar. The good offices of King Fahd did not lead to the desired outcome and, on 8 July 1991, Qatar instituted proceedings before the Court against Bahrain.

Sovereignty over Zubarah (paras. 70-97)

The Court notes that both Parties agree that the Al-Khalifah occupied Zubarah in the 1760s and that, some years later, they settled in Bahrain, but that they disagree as to the legal situation which prevailed thereafter and which culminated in the events of 1937. In the Court's view, the terms of the 1868 Agreement between Great Britain and the Sheikh of Bahrain (see above) show that any attempt by Bahrain to pursue its claims to Zubarah through military action at sea would not be tolerated by the British. The Court finds that thereafter the new rulers of Bahrain were never in a position to engage in direct acts of authority in Zubarah. Bahrain maintains, however, that the Al-Khalifah continued to exercise control over Zubarah through a Naim-led tribal confederation loyal to them, notwithstanding that at the end of the eighteenth century they had moved the seat of their government to the islands of Bahrain. The Court does not accept this contention.

The Court considers that, in view of the role played by Great Britain and the Ottoman Empire in the region, it is significant to note article 11 of the Anglo-Ottoman Convention signed on 29 July 1913, which states, inter alia: "it is agreed between the two Governments that the said peninsula will, as in the past, be governed by the Sheikh Jasim-bin-Sani and his successors". Thus Great Britain and the Ottoman Empire did not recognize Bahrain's sovereignty over the peninsula, including Zubarah. In their opinion the whole Qatar peninsula would continue to be governed by Sheikh Jassim Al-Thani, who had formerly been nominated *kaimakam* by the Ottomans, and by his successors. Both parties agree that the 1913 Anglo-Ottoman Convention was never ratified; they differ on the other hand as to its value as evidence of Qatar's sovereignty over the peninsula. The Court observes that signed but unratified treaties may constitute an accurate expression of the understanding of the parties at the time of signature. In the circumstances of the present case the Court has come to the conclusion that the Anglo-Ottoman Convention does represent evidence of the views of Great Britain and the Ottoman Empire as to the factual extent of the authority of the Al-Thani Ruler in Qatar up to 1913. The Court also observes that article 11 of the 1913 Convention is referred to by article III of the subsequent Anglo-Ottoman treaty of 9 March 1914, duly ratified that same year. The parties to that treaty therefore did not contemplate any authority over the peninsula other than that of Qatar.

The Court then examines certain events which took place in Zubarah in 1937, after the Sheikh of Qatar had attempted to impose taxation on the Naim. It notes, inter alia, that on 5 May 1937, the Political Resident reported on those incidents to the Secretary of State for India, stating that he was "personally, therefore, . . . of the opinion that juridically the Bahrain claim to Zubarah must fail". In a telegram of 15 July 1937 to the Political Resident, the British Secretary of State indicated that the Sheikh of Bahrain should be informed that the British Government regretted that it was "not prepared to intervene between Sheikh of Qatar and Naim tribe".

In view of the foregoing, the Court finds that it cannot accept Bahrain's contention that Great Britain had always regarded Zubarah as belonging to Bahrain. The terms of the 1868 agreement between the British Government and the Sheikh of Bahrain, of the 1913 and 1914 conventions and of the letters in 1937 from the British Political Resident to the Secretary of State for India, and from the Secretary of State to the Political Resident, all show otherwise. In effect, in 1937 the British Government did not consider that Bahrain had sovereignty over Zubarah; it is for this reason that it refused to provide Bahrain with the assistance which it requested on the basis of the agreements in force between the two countries. In the period after 1868, the authority of the Sheikh of Qatar over the territory of Zubarah was gradually consolidated; it was acknowledged in the 1913 Anglo-Ottoman Convention and was definitively established in 1937. The actions of the Sheikh of Qatar in Zubarah that year were an exercise of his authority on his territory and, contrary to what Bahrain has alleged, were not an unlawful use of force against Bahrain. For all these reasons, the Court concludes that the first submission made by Bahrain cannot be upheld and that Qatar has sovereignty over Zubarah.

Sovereignty over the Hawar Islands (paras. 98-148)

The Court then turns to the question of sovereignty over the Hawar Islands, leaving aside the question of Janan for the moment.

The Court observes that the Parties' lengthy arguments on the issue of sovereignty over the Hawar Islands raise several legal issues: the nature and validity of the 1939 decision by Great Britain; the existence of an original title; *effectivités*; and the applicability of the principle of *uti possidetis juris* to the present case. The Court begins by considering the nature and validity of the 1939 British decision. Bahrain maintains that the British decision of 1939 must be considered primarily as an arbitral award, which is *res judicata*. It claims that the Court does not have jurisdiction to review the award of another tribunal, basing its proposition on decisions of the Permanent Court of International Justice and the present Court. Qatar denies the relevance of the judgments cited by Bahrain. It contends that:

> "[N]one of them are in the slightest degree relevant to the issue which the Court has to determine in the present case, namely, whether the procedures followed by the British Government in 1938 and 1939 amounted to a process of arbitration which could result in an arbitral award binding upon the parties."

The Court first considers the question whether the 1939 British decision must be deemed to constitute an arbitral award. It observes in this respect that the word arbitration, for purposes of public international law, usually refers to "the settlement of differences between States by judges of their own choice, and on the basis of respect for law" and that this wording was reaffirmed in the work of the International Law Commission, which reserved the case where the parties might have decided that the requested decision should be taken *ex æquo et bono*. The Court observes that

in the present case no agreement existed between the Parties to submit their case to an arbitral tribunal made up of judges chosen by them, who would rule either on the basis of law or *ex æquo et bono*. The Parties had only agreed that the issue would be decided by "His Majesty's Government", but left it to the latter to determine how that decision would be arrived at, and by which officials. It follows that the decision whereby, in 1939, the British Government held that the Hawar Islands belonged to Bahrain, did not constitute an international arbitral award. The Court finds that it does not therefore need to consider Bahrain's argument concerning the Court's jurisdiction to examine the validity of arbitral awards.

The Court observes, however, that the fact that a decision is not an arbitral award does not mean that the decision is devoid of legal effect. In order to determine the legal effect of the 1939 British decision, it then recalls the events which preceded and immediately followed its adoption. Having done so, the Court considers Qatar's argument challenging the validity of the 1939 British decision.

Qatar first contends that it never gave its consent to have the question of the Hawar Islands decided by the British Government.

The Court observes, however, that following the Exchange of Letters of 10 and 20 May 1938, the Ruler of Qatar consented on 27 May 1938 to entrust decision of the Hawar Islands question to the British Government. On that day he had submitted his complaint to the British Political Agent. Finally, like the Ruler of Bahrain, he had consented to participate in the proceedings that were to lead to the 1939 decision. The jurisdiction of the British Government to take the decision concerning the Hawar Islands derived from these two consents; the Court therefore has no need to examine whether, in the absence of such consent, the British Government would have had the authority to do so under the treaties making Bahrain and Qatar protected States of Great Britain.

Qatar maintains in the second place that the British officials responsible for the Hawar Islands question were biased and had prejudged the matter. The procedure followed is accordingly alleged to have violated "the rule which prohibits bias in a decision maker on the international plane". It is also claimed that the parties were not given an equal and fair opportunity to present their arguments and that the decision was not reasoned.

The Court begins by recalling that the 1939 decision is not an arbitral award made upon completion of arbitral proceedings. This does not, however, mean that it was devoid of all legal effect. Quite to the contrary, the pleadings, and in particular the Exchange of Letters referred to above, shows that Bahrain and Qatar consented to the British Government settling their dispute over the Hawar Islands. The 1939 decision must therefore be regarded as a decision that was binding from the outset on both States and continued to be binding on those same States after 1971, when they ceased to be British protected States. The Court further observes that while it is true that the competent British officials proceeded on the premise that Bahrain possessed prima facie title to the islands and that the burden of proving the opposite lay on the Ruler of Qatar, Qatar cannot maintain that it was contrary to justice to proceed on the basis of this premise when Qatar had been informed before agreeing to the procedure that this would occur and had consented to the proceedings being conducted on that basis. During those proceedings the two Rulers were able to present their arguments and each of them was afforded an amount of time which the Court considers was sufficient for this purpose; Qatar's contention that it was subjected to unequal treatment therefore cannot be upheld. The Court also notes that, while

the reasoning supporting the 1939 decision was not communicated to the Rulers of Bahrain and Qatar, this lack of reasons has no influence on the validity of the decision taken, because no obligation to state reasons had been imposed on the British Government when it was entrusted with the settlement of the matter. Therefore, Qatar's contention that the 1939 British decision is invalid for lack of reasons cannot be upheld. Finally, the fact that the Sheikh of Qatar had protested on several occasions against the content of the British decision of 1939 after he had been informed of it is not such as to render the decision unopposable to him, contrary to what Qatar maintains. The Court accordingly concludes that the decision taken by the British Government on 11 July 1939 is binding on the parties. For all of these reasons, the Court concludes that Bahrain has sovereignty over the Hawar Islands, and that the submissions of Qatar on this question cannot be upheld. The Court finally observes that the conclusion thus reached by it on the basis of the British decision of 1939 makes it unnecessary for the Court to rule on the arguments of the Parties based on the existence of an original title, *effectivités*, and the applicability of the principle of *uti possidetis juris* to the present case.

Sovereignty over Janan Island (paras. 149-165)

The Court then considers the Parties' claims to Janan Island. It begins by observing that Qatar and Bahrain have differing ideas of what should be understood by the expression "Janan Island". According to Qatar, "Janan is an island approximately 700 metres long and 175 metres wide situated off the south-western tip of the main Hawar island". For Bahrain, the term covers "two islands, situated between one and two nautical miles off the southern coast of Jazirat Hawar, which merge into a single island at low tide". After examination of the arguments of the Parties, the Court considers itself entitled to treat Janan and Hadd Janan as one island.

The Court then, as it has done in regard to the Parties' claims to the Hawar Islands, begins by considering the effects of the British decision of 1939 on the question of sovereignty over Janan Island. As has already been stated, in that decision the British Government concluded that the Hawar Islands "belong[ed] to the State of Bahrain and not to the State of Qatar". No mention was made of Janan Island. Nor was it specified what was to be understood by the expression "Hawar Islands". The Parties have accordingly debated at length over the issue of whether Janan fell to be regarded as part of the Hawar Islands and whether, as a result, it pertained to Bahrain's sovereignty by virtue of the 1939 decision or whether, on the contrary, it was not covered by that decision.

In support of their respective arguments, Qatar and Bahrain have each cited documents both anterior and posterior to the British decision of 1939. Qatar has in particular relied on a "decision" by the British Government in 1947 relating to the seabed delimitation between the two States. Bahrain recalled that it had submitted four lists to the British Government—in April 1936, August 1937, May 1938 and July 1946—with regard to the composition of the Hawar Islands.

The Court notes that the three lists submitted prior to 1939 by Bahrain to the British Government with regard to the composition of the Hawar group are not identical. In particular, Janan Island appears by name in only one of those three lists. As to the fourth list, which is different from the three previous ones, it does make express reference to Janan Island, but it was submitted to the British Government only in 1946, several years after the adoption of the 1939 decision. Thus, no definite conclusion may be drawn from these various lists.

The Court then considers the letters sent on 23 December 1947 by the British Political Agent in Bahrain to the Rulers of Qatar and Bahrain. By those letters the Political Agent acting on behalf of the British Government informed the two States of the delimitation of their seabeds effected by the British Government. This Government, which had been responsible for the 1939 decision on the Hawar Islands, sought, in the last sentence of subparagraph 4 (ii) of these letters, to make it clear that "Janan Island is not regarded as being included in the islands of the Hawar group". The British Government accordingly did not "recognize" the Sheikh of Bahrain as having "sovereign rights" over that island and, in determining the points fixed in paragraph 5 of those letters, as well as in drawing the map enclosed with those letters, it regarded Janan as belonging to Qatar. The Court considers that the British Government, in thus proceeding, provided an authoritative interpretation of the 1939 decision and of the situation resulting from it. Having regard to all of the foregoing, the Court does not accept Bahrain's argument that in 1939 the British Government recognized "Bahrain's sovereignty over Janan as part of the Hawars". It finds that Qatar has sovereignty over Janan Island including Hadd Janan, on the basis of the decision taken by the British Government in 1939, as interpreted in 1947.

Maritime delimitation (paras. 166-250)

The Court then turns to the question of the maritime delimitation.

It begins by taking note that the Parties are in agreement that the Court should render its decision on the maritime delimitation in accordance with international law. Neither Bahrain nor Qatar is party to the Geneva Conventions on the Law of the Sea of 29 April 1958; Bahrain has ratified the United Nations Convention on the Law of the Sea of 10 December 1982 but Qatar is only a signatory to it. The Court indicates that customary international law, therefore, is the applicable law. Both Parties, however, agree that most of the provisions of the 1982 Convention which are relevant for the present case reflect customary law.

A single maritime boundary (paras. 168-173)

The Court notes that, under the terms of the "Bahraini formula", the Parties requested the Court, in December 1990, "to draw a single maritime boundary between their respective maritime areas of seabed, subsoil and superjacent waters".

The Court observes that it should be kept in mind, that the concept of "single maritime boundary" may encompass a number of functions. In the present case the single maritime boundary will be the result of the delimitation of various jurisdictions. In the southern part of the delimitation area, which is situated where the coasts of the Parties are opposite to each other, the distance between these coasts is nowhere more than 24 nautical miles. The boundary the Court is expected to draw will, therefore, delimit exclusively their territorial seas and, consequently, an area over which they enjoy territorial sovereignty. More to the north, however, where the coasts of the two States are no longer opposite to each other but are rather comparable to adjacent coasts, the delimitation to be carried out will be one between the continental shelf and exclusive economic zone belonging to each of the Parties, areas in which States have only sovereign rights and functional jurisdiction. Thus both Parties have differentiated between a southern and a northern sector.

The Court further observes that the concept of a single maritime boundary does not stem from multilateral treaty law but from State practice, and that it finds its

explanation in the wish of States to establish one uninterrupted boundary line delimiting the various—partially coincident—zones of maritime jurisdiction appertaining to them. In the case of coincident jurisdictional zones, the determination of a single boundary for the different objects of delimitation

> "can only be carried out by the application of a criterion or combination of criteria, which does not give preferential treatment to one of these . . . objects to the detriment of the other and at the same time is such as to be equally suitable to the division of either of them",

as was stated by the Chamber of the Court in the *Gulf of Maine* case. In that case, the Chamber was asked to draw a single line which would delimit both the continental shelf and the superjacent water column.

Delimitation of the territorial sea (paras. 174-223)

Delimitation of territorial seas does not present comparable problems, since the rights of the coastal State in the area concerned are not functional but territorial, and entail sovereignty over the seabed and the superjacent waters and air column. Therefore, when carrying out that part of its task, the Court has to apply in the present case first and foremost the principles and rules of international customary law which refer to the delimitation of the territorial sea, while taking into account that its ultimate task is to draw a single maritime boundary that serves other purposes as well. The Parties agree that the provisions of article 15 of the 1982 Convention on the Law of the Sea, headed "Delimitation of the territorial sea between States with opposite or adjacent coasts", are part of customary law. This Article provides:

> "Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest point on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith."

The Court notes that article 15 of the 1982 Convention is virtually identical to article 12, paragraph 1, of the 1958 Convention on the Territorial Sea and the Contiguous Zone, and is to be regarded as having a customary character. It is often referred to as the "equidistance/special circumstances" rule. The most logical and widely practised approach is first to draw provisionally an equidistance line and then to consider whether that line must be adjusted in the light of the existence of special circumstances. The Court explains that once it has delimited the territorial seas belonging to the Parties, it will determine the rules and principles of customary law to be applied to the delimitation of the Parties' continental shelves and their exclusive economic zones or fishery zones. The Court will further decide whether the method to be chosen for this delimitation differs from or is similar to the approach just outlined.

The equidistance line (paras. 177-216)

The Court begins by noting that the equidistance line is the line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. This line can only be

drawn when the baselines are known. Neither of the Parties has as yet specified the baselines which are to be used for the determination of the breadth of the territorial sea, nor have they produced official maps or charts which reflect such baselines. Only during the present proceedings have they provided the Court with approximate basepoints which in their view could be used by the Court for the determination of the maritime boundary.

The relevant coasts (paras. 178-216)

The Court indicates that it will therefore first determine the relevant coasts of the Parties, from which will be determined the location of the baselines, and the pertinent basepoints from which enable the equidistance line to be measured.

Qatar has argued that, for purposes of this delimitation, it is the mainland-to-mainland method which should be applied in order to construct the equidistance line. It claims that the notion of "mainland" applies both to the Qatar peninsula, which should be understood as including the main Hawar island, and to Bahrain, of which the islands to be taken into consideration are al-Awal (also called Bahrain Island), together with al-Muharraq and Sitrah. For Qatar, application of the mainland-to-mainland method has two main consequences. First, it takes no account of the islands (except for the above-mentioned islands, Hawar on the Qatar side and al-Awal, al-Muharraq and Sitrah on the Bahrain side), islets, rocks, reefs or low-tide elevations lying in the relevant area. Second, in Qatar's view, application of the mainland-to-mainland method of calculation would also mean that the equidistance line has to be constructed by reference to the high-water line.

Bahrain contends that it is a de facto archipelago or multiple-island State, characterized by a variety of maritime features of diverse character and size. All these features are closely interlinked and together they constitute the State of Bahrain; reducing that State to a limited number of so-called "principal" islands would be a distortion of reality and a refashioning of geography. Since it is the land which determines maritime rights, the relevant basepoints are situated on all those maritime features over which Bahrain has sovereignty. Bahrain further contends that, according to conventional and customary international law, it is the low-water line which is determinative for the breadth of the territorial sea and for the delimitation of overlapping territorial waters. Finally, Bahrain has stated that, as a de facto archipelagic State, it is entitled to declare itself an archipelagic State under Part IV of the 1982 Law of the Sea Convention and to draw the permissive baselines of article 47 of that Convention, i.e., "straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago". Qatar has contested Bahrain's claim that it is entitled to declare itself an archipelagic State under Part IV of the 1982 Convention.

With regard to Bahrain's claim, the Court observes that Bahrain has not made this claim one of its formal submissions and that the Court is therefore not requested to take a position on the issue. What the Court, however, is called upon to do is to draw a single maritime boundary in accordance with international law. The Court can carry out this delimitation only by applying those rules and principles of customary law which are pertinent under the prevailing circumstances. It emphasizes that its decision will have binding force between the Parties, in accordance with Article 59 of the Statute of the Court, and consequently could not be put in issue by the unilateral action of either of the Parties, and in particular, by any decision of Bahrain to declare itself an archipelagic State.

The Court, therefore, turns to the determination of the relevant coasts from which the breadth of the territorial seas of the Parties is measured. In this respect the Court recalls that under the applicable rules of international law the normal baseline for measuring this breadth is the low-water line along the coast (art. 5, 1982 Convention on the Law of the Sea).

In previous cases the Court has made clear that maritime rights derive from the coastal State's sovereignty over the land, a principle which can be summarized as "the land dominates the sea". It is thus the terrestrial territorial situation that must be taken as starting point for the determination of the maritime rights of a coastal State. In order to determine what constitutes Bahrain's relevant coasts and what are the relevant baselines on the Bahraini side, the Court must first establish which islands come under Bahraini sovereignty. The Court recalls that it has concluded that the Hawar Islands belong to Bahrain and that Janan belongs to Qatar. It observes that other islands which can be identified in the delimitation area which are relevant for delimitation purposes in the southern sector are Jazirat Mashtan and Umm Jalid, islands which are at high tide very small in size, but at low tide have a surface which is considerably larger. Bahrain claims to have sovereignty over these islands, a claim which is not contested by Qatar.

Fasht al Azm (paras. 188-190)

However, the Parties are divided on the issue of whether Fasht al Azm must be deemed to be part of the island of Sitrah or whether it is a low-tide elevation which is not naturally connected to Sitrah Island. In 1982, Bahrain undertook reclamation works for the construction of a petrochemical plant, during which an artificial channel was dredged connecting the. waters on both sides of Fasht al Azm. After careful analysis of the various reports, documents and charts submitted by the Parties, the Court has been unable to establish whether a permanent passage separating Sitrah Island from Fasht al Azm existed before the reclamation works of 1982 were undertaken. For the reasons explained below, the Court is nonetheless able to undertake the requested delimitation in this sector without determining the question whether Fasht al Azm is to be regarded as part of the island of Sitrah or as a low-tide elevation.

Qit'at Jaradah (paras. 191-198)

Another issue on which the Parties have totally opposing views is whether Qit'at Jaradah is an island or a low-tide elevation. The Court recalls that the legal definition of an island is "a naturally formed area of land, surrounded by water, which is above water at high tide" (1958 Convention on the Territorial Sea and Contiguous Zone, art. 10, para. 1; 1982 Convention on the Law of the Sea, art. 121, para. 1). The Court has carefully analysed the evidence submitted by the Parties and weighed the conclusions of the experts referred to above, in particular the fact that the experts appointed by Qatar did not themselves maintain that it was scientifically proven that Qit'at Jaradah is a low-tide elevation. On these bases, the Court concludes that the maritime feature of Qit'at Jaradah satisfies the above-mentioned criteria and that it is an island which should as such be taken into consideration for the drawing of the equidistance line. In the present case, taking into account the size of Qit'at Jaradah, the activities carried out by Bahrain on that island must be considered sufficient to support Bahrain's claim that it has sovereignty over it.

Fasht ad Dibal (paras. 199-209)

Both Parties agree that Fasht ad Dibal is a low-tide elevation. Whereas Qatar maintains—just as it did with regard to Qit'at Jaradah—that Fasht ad Dibal as a low-tide elevation cannot be appropriated, Bahrain contends that low-tide elevations by their very nature are territory, and therefore can be appropriated in accordance with the criteria which pertain to the acquisition of territory. "Whatever their location, low-tide elevations are always subject to the law which governs the acquisition and preservation of territorial sovereignty, with its subtle dialectic of title and *effectivités*."

The Court observes that according to the relevant provisions of the Conventions on the Law of the Sea, which reflect customary international law, a low-tide elevation is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide (1958 Convention on the Territorial Sea and the Contiguous Zone, art. 11, para. 1; 1982 Convention on the Law of the Sea, art. 13, para. 1). When a low-tide elevation is situated in the overlapping area of the territorial sea of two States, whether with opposite or with adjacent coasts, both States in principle are entitled to use its low-water line for the measuring of the breadth of their territorial sea. The same low-tide elevation then forms part of the coastal configuration of the two States. That is so even if the low-tide elevation is nearer to the coast of one State than that of the other, or nearer to an island belonging to one party than it is to the mainland coast of the other. For delimitation purposes the competing rights derived by both coastal States from the relevant provisions of the law of the sea would by necessity seem to neutralize each other. In Bahrain's view, however, it depends upon the *effectivités* presented by the two coastal States which of them has a superior title to the low-tide elevation in question and is therefore entitled to exercise the right attributed by the relevant provisions of the law of the sea, just as in the case of islands which are situated within the limits of the breadth of the territorial sea of more than one State. In the view of the Court the decisive question for the present case is whether a State can acquire sovereignty by appropriation over a low-tide elevation situated within the breadth of its territorial sea when that same low-tide elevation lies also within the breadth of the territorial sea of another State. International treaty law is silent on the question whether low-tide elevations can be considered to be "territory". Nor is the Court aware of a uniform and widespread State practice which might have given rise to a customary rule which unequivocally permits or excludes appropriation of low-tide elevations. It is only in the context of the law of the sea that a number of permissive rules have been established with regard to low-tide elevations which are situated at a relatively short distance from a coast. The few existing rules do not justify a general assumption that low-tide elevations are territory in the same sense as islands. It has never been disputed that islands constitute terra firma, and are subject to the rules and principles of territorial acquisition; the difference in effects which the law of the sea attributes to islands and low-tide elevations is considerable. It is thus not established that in the absence of other rules and legal principles, low-tide elevations can, from the viewpoint of the acquisition of sovereignty, be fully assimilated with islands or other land territory. In this respect the Court recalls the rule that a low-tide elevation which is situated beyond the limits of the territorial sea does not have a territorial sea of its own. A low-tide elevation, therefore, as such does not generate the same rights as islands or other territory. The Court, consequently, is of the view that in the present case there is no ground for recognizing the right of Bahrain to use as a baseline the low-water line of those

low-tide elevations which are situated in the zone of overlapping claims, or for recognizing Qatar as having such a right. The Court accordingly concludes that for the purposes of drawing the equidistance line, such low-tide elevations must be disregarded.

Method of straight baselines (paras. 210-216)

The Court further observes that the method of straight baselines, which Bahrain applied in its reasoning and in the maps provided to the Court, is an exception to the normal rules for the determination of baselines and may only be applied if a number of conditions are met. This method must be applied restrictively. Such conditions are primarily that either the coastline is deeply indented and cut into, or that there is a fringe of islands along the coast in its immediate vicinity. The fact that a State considers itself a multiple-island State or a de facto archipelagic State does not allow it to deviate from the normal rules for the determination of baselines unless the relevant conditions are met. The coasts of Bahrain's main islands do not form a deeply indented coast, nor does Bahrain claim this. It contends, however, that the maritime features off the coast of the main islands may be assimilated to a fringe of islands which constitute a whole with the mainland. The Court does not deny that the maritime features east of Bahrain's main islands are part of the overall geographical configuration; it would be going too far, however, to qualify them as a fringe of islands along the coast. The Court, therefore, concludes that Bahrain is not entitled to apply the method of straight baselines. Thus each maritime feature has its own effect for the determination of the baselines, on the understanding that, on the grounds set out before, the low-tide elevations situated in the overlapping zone of territorial seas will be disregarded. It is on this basis that the equidistance line must be drawn. The Court notes, however, that Fasht al Azm requires special mention. If this feature were to be regarded as part of the island of Sitrah, the basepoints for the purposes of determining the equidistance line would be situated on Fasht al Azm's eastern low-water line. If it were not to be regarded as part of the island of Sitrah, Fasht al Azm could not provide such basepoints. As the Court has not determined whether this feature does form part of the island of Sitrah, it has drawn two equidistance lines reflecting each of these hypotheses.

Special circumstances (paras. 217-223)

The Court then turns to the question of whether there are special circumstances which make it necessary to adjust the equidistance line as provisionally drawn in order to obtain an equitable result in relation to this part of the single maritime boundary to be fixed.

With regard to the question of Fasht al Azm, the Court considers that on either of the above-mentioned hypotheses there are special circumstances which justify choosing a delimitation line passing between Fasht al Azm and Qit'at ash Shajarah. With regard to the question of Qit'at Jaradah. the Court observes that it is a very small island, uninhabited and without any vegetation. This tiny island, which—as the Court has determined—comes under Bahraini sovereignty, is situated about midway between the main island of Bahrain and the Qatar peninsula. Consequently, if its low-water line were to be used for determining a basepoint in the construction of the equidistance line, and this line taken as the delimitation line, a disproportionate effect would be given to an insignificant maritime feature. The Court thus finds that there is a special circumstance in this case warranting the choice of a delimitation line passing immediately to the east of Qit'at Jaradah.

The Court observed earlier that, since it did not determine whether Fasht al Azm is part of Sitrah island or a separate low-tide elevation, it is necessary to draw provisionally two equidistance lines. If no effect is given to Qit'at Jaradah and in the event that Fasht al Azm is considered to be part of Sitrah island, the equidistance line thus adjusted cuts through Fasht ad Dibal leaving the greater part of it on the Qatari side. If, however, Fasht al Azm is seen as a low-tide elevation, the adjusted equidistance line runs west of Fasht ad Dibal. In view of the fact that under both hypotheses, Fasht ad Dibal is largely or totally on the Qatari side of the adjusted equidistance line, the Court considers it appropriate to draw the boundary line between Qit'at Jaradah and Fasht ad Dibal. As Fasht ad Dibal thus is situated in the territorial sea of Qatar, it falls under the sovereignty of that State.

On these considerations the Court finds that it is in a position to determine the course of that part of the single maritime boundary which will delimit the territorial seas of the Parties. Before doing so the Court notes, however, that it cannot fix the boundary's southern-most point, since its definitive location is dependent upon the limits of the respective maritime zones of Saudi Arabia and of the Parties. The Court also considers it appropriate, in accordance with common practice, to simplify what would otherwise be a very complex delimitation line in the region of the Hawar Islands.

Taking account of all of the foregoing, the Court decides that, from the point of intersection of the respective maritime limits of Saudi Arabia on the one hand and of Bahrain and Qatar on the other, which cannot be fixed, the boundary will follow a north-easterly direction, then immediately turn in an easterly direction, after which it will pass between Jazirat Hawar and Janan; it will subsequently turn to the north and pass between the Hawar Islands and the Qatar peninsula and continue in a northerly direction, leaving the low-tide elevation of Fasht Bu Thur, and Fasht al Azm, on the Bahraini side, and the low-tide elevations of Qita'a el Erge and Qit'at ash Shajarah on the Qatari side; finally it will pass between Qit'at Jaradah and Fasht ad Dibal, leaving Qit'at Jaradah on the Bahraini side and Fasht ad Dibal on the Qatari side.

With reference to the question of navigation, the Court notes that the channel connecting Qatar's maritime zones situated to the south of the Hawar Islands and those situated to the north of those islands, is narrow and shallow, and little suited to navigation. It emphasizes that the waters lying between the Hawar Islands and the other Bahraini islands are not internal waters of Bahrain, but the territorial sea of that State. Consequently, Qatari vessels, like those of all other States, shall enjoy in these waters the right of innocent passage accorded by customary international law. In the same way, Bahraini vessels, like those of all other States, enjoy the same right of innocent passage in the territorial sea of Qatar.

Delimitation of the continental shelf and exclusive economic zone (paras. 224-249)

The Court then deals with the drawing of the single maritime boundary in that part of the delimitation area which covers both the continental shelf and the exclusive economic zone. Referring to its earlier case-law on the drawing of a single maritime boundary the Court observes that it will follow the same approach in the present case. For the delimitation of the maritime zones beyond the 12-mile zone it will first provisionally draw an equidistance line and then consider whether there are circumstances which must lead to an adjustment of that line. The Court further notes that the equidistance/special circumstances rule, which is applicable in particular to the delimitation of the territorial sea, and the equitable principles/relevant circumstances rule, as it has been developed

since 1958 in case-law and State practice with regard to the delimitation of the continental shelf and the exclusive economic zone, are closely interrelated.

The Court then examines whether there are circumstances which might make it necessary to adjust the equidistance line in order to achieve an equitable result. With regard to Bahrain's claim concerning the pearling industry, the Court first takes note of the fact that that industry effectively ceased to exist a considerable time ago. It further observes that, from the evidence submitted to it, it is clear that pearl diving in the Gulf area traditionally was considered as a right which was common to the coastal population. The Court, therefore, does not consider the existence of pearling banks, though predominantly exploited in the past by Bahraini fishermen, as forming a circumstance which would justify an eastward shifting of the equidistance line as requested by Bahrain.

The Court also considers that it does not need to determine the legal character of the "decision" contained in the letters of 23 December 1947 of the British Political Agent to the Rulers of Bahrain and Qatar with respect to the division of the seabed, which Qatar claims as a special circumstance. It suffices for it to note that neither of the Parties has accepted it as a binding decision and that they have invoked only parts of it to support their arguments.

Taking into account the fact that it has decided that Bahrain has sovereignty over the Hawar Islands, the Court finds that the disparity in length of the coastal fronts of the Parties cannot, as Qatar claims, be considered such as to necessitate an adjustment of the equidistance line.

The Court finally recalls that in the northern sector the coasts of the Parties are comparable to adjacent coasts abutting on the same maritime areas extending seawards into the Gulf. The northern coasts of the territories belonging to the Parties are not markedly different in character or extent; both are flat and have a very gentle slope. The only noticeable element is Fasht al Jarim as a remote projection of Bahrain's coastline in the Gulf area, which, if given full effect, would "distort the boundary and have disproportionate effects". In the view of the Court, such a distortion, due to a maritime feature located well out to sea and of which at most a minute part is above water at high tide, would not lead to an equitable solution which would be in accord with all other relevant factors referred to above. In the circumstances of the case considerations of equity require that Fasht al Jarim should have no effect in determining the boundary line in the northern sector.

The Court accordingly decides that the single maritime boundary in this sector shall be formed in the first place by a line which, from a point situated to the north-west of Fasht ad Dibal, shall meet the equidistance line as adjusted to take account of the absence of effect given to Fasht al Jarim. The boundary shall then follow this adjusted equidistance line until it meets the delimitation line between the respective maritime zones of Iran on the one hand and of Bahrain and Qatar on the other.

*

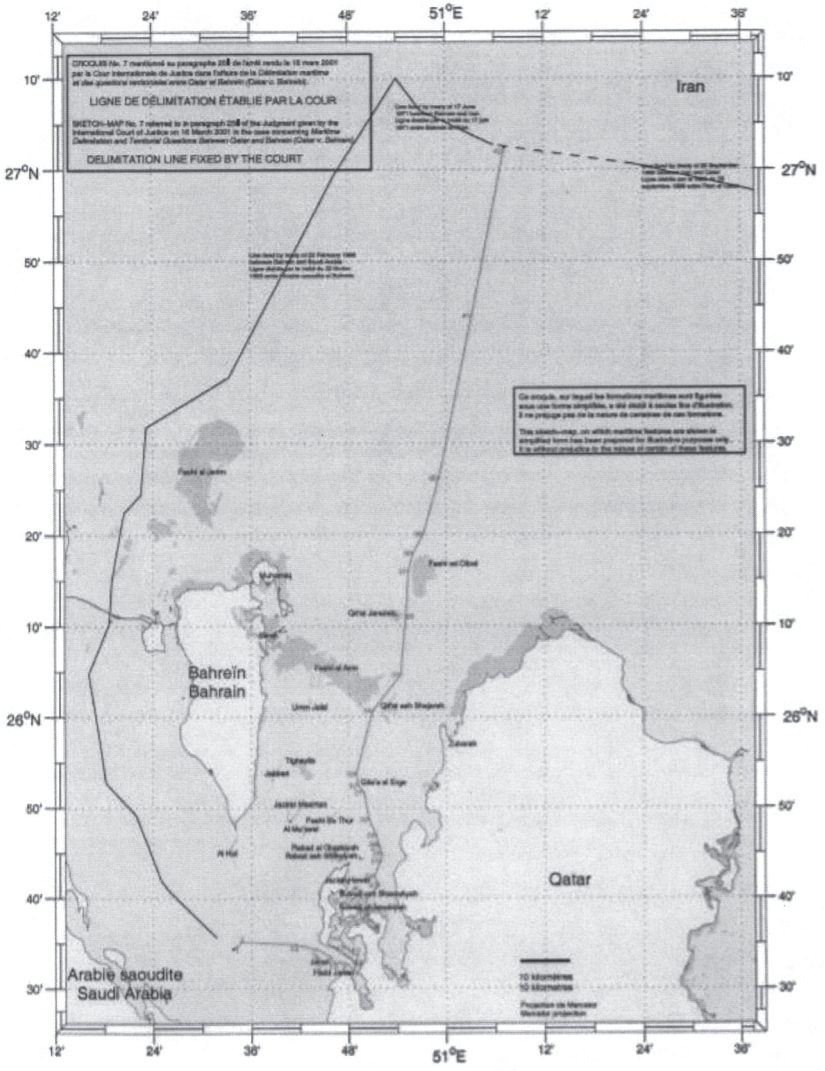
The Court concludes from all of the foregoing that the single maritime boundary that divides the various maritime zones of the State of Qatar and the State of Bahrain shall be formed by a series of geodesic lines joining, in the order specified, the points with the following coordinates:

Point	*Longitude North*	*Longitude East*
1	25°34'34"	50°34'3"
2	25°35'10"	50°34'48"
3	25°34'53"	50°41'22"
4	25°34'50"	50°41'35"
5	25°34'21"	50°44'5"
6	25°33'29"	50°45'49"
7	25°32'49"	50°46'11"
8	25°32'55"	50°46'48"
9	25°32'43"	50°47'46"
10	25°32'6"	50°48'36"
11	25°32'40"	50°48'54"
12	25°32'55"	50°48'48"
13	25°33'44"	50°49'4"
14	25°33'49"	50°48'32"
15	25°34'33"	50°47'37"
16	25°35'33"	50°46'49"
17	25°37'21"	50°47'54"
18	25°37'45"	50°49'44"
19	25°38'19"	50°50'22"
20	25°38'43"	50°50'26"
21	25°39'31"	50°50'6"
22	25°40'10"	50°50'30"
23	25°41'27"	50°51'43"
24	25°42'27"	50°51'9"
25	25°44'7"	50°51'58"
26	25°44'58"	50°52'5"
27	25°45'35"	50°51''53"
28	25°46'0"	50°51'40"
29	25°46'57"	50°51'23"
30	25°48'43"	50°50'32"
31	25°51'40"	50°49'53"
32	25°52'26"	50°49'12"
33	25°53'42"	50°48'57"
34	26°0'40"	50°51'00"
35	26°4'38"	50°54'27"
36	26°11'2"	50°55'3"
37	26°15'55"	50°55'22"
38	26°17'58"	50°55'58"
39	26°20'2"	50°57'16"
40	26°26'11"	50°59'12"
41	26°43'58"	51°3'16"
42	27°2'0"	51°7'11"

Below point 1, the single maritime boundary shall follow, in a south-westerly direction, a loxodrome having an azimuth of 234°16'53", until it meets the delimitation line between the respective maritime zones of Saudi Arabia on the one hand and of Bahrain and Qatar on the other. Beyond point 42, the single maritime boundary shall follow, in a north-north-easterly direction, a loxodrome having an azimuth of 12°15'12", until it meets the delimitation line between the respective maritime zones of Iran on the one hand and of Bahrain and Qatar on the other.

The course of this boundary has been indicated, for illustrative purposes only, on sketch-map No. 7 attached to the judgment, reproduced below.

Sketch-map No. 7



Operative paragraph (para. 251):

"For these reasons.

THE COURT,

(1) Unanimously,

Finds that the State of Qatar has sovereignty over Zubarah;

(2) (*a*) By twelve votes to five,

Finds that the State of Bahrain has sovereignty over the Hawar Islands:

IN FAVOUR: *President* Guillaume, *Vice-President* Shi; *Judges*, Oda, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal; *Judge ad hoc* Fortier;

AGAINST: *Judges* Bedjaoui, Ranjeva, Koroma, Vereshchetin; *Judge ad hoc* Torres Bernárdez;

(*b*) Unanimously,

Recalls that vessels of the State of Qatar enjoy in the territorial sea of Bahrain separating the Hawar Islands from the other Bahraini islands the right of innocent passage accorded by customary international law;

(3) By thirteen votes to four,

Finds that the State of Qatar has sovereignty over Janan Island, including Hadd Janan;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Parra-Aranguren, Rezek, Al-Khasawneh, Buergenthal; *Judge ad hoc* Torres Bernárdez;

AGAINST: *Judges* Oda, Higgins, Kooijmans; *Judge ad hoc* Fortier;

(4) By twelve votes to five,

Finds that the State of Bahrain has sovereignty over the island of Qit'at Jaradah;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Oda, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal; *Judge ad hoc* Fortier;

AGAINST: *Judges* Bedjaoui, Ranjeva, Koroma, Vereshchetin; *Judge ad hoc* Torres Bernárdez;

(5) Unanimously,

Finds that the low-tide elevation of Fasht ad Dibal falls under the sovereignty of the State of Qatar;

(6) By thirteen votes to four,

Decides that the single maritime boundary that divides the various maritime zones of the State of Qatar and the State of Bahrain shall be drawn as indicated in paragraph 250 of the present Judgment;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Oda, Herczegh, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal; *Judge ad hoc* Fortier;

AGAINST: *Judges* Bedjaoui, Ranjeva. Koroma; *Judge ad hoc* Torres Bernárdez."

*

Judge Oda appended a separate opinion to the Judgment; Judges Bedjaoui, Ranjeva and Koroma a joint dissenting opinion; Judges Herczegh, Vereshchetin and Higgins declarations; Judges Parra-Aranguren, Kooijmans and Al-Khasawneh separate opinions; Judge ad hoc Torres Bernárdez a dissenting opinion, and Judge ad hoc Fortier a separate opinion.

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

By Orders of 6 September 2000 (*I.C.J. Reports 2000*, pp. 140 and 143), the President of the Court, taking account of the views of the Parties, fixed 3 August 2001 as the time limit for the filing of the Rejoinder of the United Kingdom and the United States respectively. The Rejoinders were filed within the prescribed time limits.

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

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. By an Order of 4 September 2000 (*I.C.J. Reports 2000*, p. 137), the President of the Court extended, at the request of the United States and taking into account the agreement between the Parties, the time limit for the filing of the United States Rejoinder from November 2000 to 23 March 2001. The Rejoinder was filed within the time limit thus extended.

By an Order of 28 August 2001 (*I.C.J. Reports 2001*, p. 568), the Vice-President of the Court, taking account of the agreement of the Parties, authorized the submission by Iran of an additional pleading relating solely to the counterclaim submitted by the United States and fixed 24 September 2001 as the time limit for the filing of that pleading. The additional pleading was filed by Iran within the prescribed time limit.

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

By an Order of 10 September 2001 (*I.C.J. Reports 2001*, p. 572), the President of the Court placed on record the withdrawal by Yugoslavia of the counterclaims submitted by that State in its Counter-Memorial. The Order was made after Yugoslavia had informed the Court that it intended to withdraw its counterclaims and Bosnia and Herzegovina had indicated to the latter that it had no objection to that withdrawal.

6. *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening)*

By an Order of 21 October 1999 (*I.C J. Reports 1999*, p. 1029), the Court permitted Equatorial Guinea to intervene in the case, pursuant to Article 62 of the

Statute, to the extent, in the manner and for the purposes set out in its Application for permission to intervene, and fixed 4 April 2001 as the time limit for the filing of the written statement of the Republic of Equatorial Guinea and 4 July 2001 for the written observations of the Republic of Cameroon and of the Federal Republic of Nigeria. Equatorial Guinea's written statement was filed within the prescribed time limit.

By an Order of 20 February 2001 (*I.C.J. Reports 2001*, p. 9) the Court, at the request of Cameroon and taking into account the agreement of the Parties, authorized the submission by Cameroon of an additional pleading, relating solely to the counterclaims submitted by Nigeria and fixed 4 July 2001 as the time limit for the filing of that pleading.

Following the filing of the various pleadings which were due to be lodged on 4 July 2001, public sittings to hear the oral arguments of the Parties were held from 18 February to 21 March 2002.

At the conclusion of those hearings Cameroon requested the Court, to adjudge and declare:

"(*a*) That the land boundary between Cameroon and Nigeria takes the following course:

— from the point designated by the coordinates 13°05' N and 14°05' E, the boundary follows a straight line as far as the mouth of the Ebeji, situated at the point located at the coordinates 12°13'7" N and 14°12'12" E, as defined within the framework of the LCBC and constituting an authoritative interpretation of the Milner-Simon Declaration of 10 July 1919 and the Thomson-Marchand Declarations of 29 December 1929 and 31 January 1930, as confirmed by the Exchange of Letters of 9 January 1931; in the alternative, the mouth of the Ebeji is situated at the point located at the coordinates 12°31'12" N and 14°11'48" E;

— from that point it follows the course fixed by those instruments as far as the 'very prominent peak' described in paragraph 60 of the Thomson-Marchand Declaration and called by the usual name of 'Mount Kombon';

— from 'Mount Kombon' the boundary then runs to 'Pillar 64' mentioned in paragraph 12 of the Anglo-German Agreement of Obokum of 12 April 1913 and follows, in that sector, the course described in section 6 (1) of the British Nigeria (Protectorate and Cameroons) Order in Council of 2 August 1946;

— from Pillar 64 it follows the course described in paragraphs 13 to 21 of the Obokum Agreement of 12 April 1913 as far as Pillar 114 on the Cross River;

— thence, as far as the intersection of the straight line from Bakassi Point to King Point with the centre of the navigable channel of the Akwayafe, the boundary is determined by paragraphs XVI to XXI of the Anglo-German Agreement of 11 March 1913.

(*b*) That, in consequence, inter alia, sovereignty over the peninsula of Bakassi and over the disputed parcel occupied by Nigeria in the area of Lake Chad, in particular over Darak and its region, is Cameroonian.

(*c*) That the boundary of the maritime areas appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria takes the following course:

— from the intersection of the straight line from Bakassi Point to King Point with the centre of the navigable channel of the Akwayafe to point '12', that boundary is confirmed by the 'compromise line' entered on British Admiralty Chart No. 3433 by the Heads of State of the two countries on 4 April 1971 (Yaoundé II Declaration) and, from that point 12 to point 'G', by the Declaration signed at Maroua on 1 June 1975;

— from point G the equitable line follows the direction indicated by points G, H (coordinates 8°21'16" E and 4°17' N), I (7°55'40" E and 3°46' N), J (7°12'08" E and 3°12'35" N), K (6°45'22" E and 3°01'05" N), and continues from K up to the outer limit of the maritime zones which international law places under the respective jurisdiction of the two Parties.

(*d*) That in attempting to modify unilaterally and by force the courses of the boundary defined above under (*a*) and (*c*). the Federal Republic of Nigeria has violated and is violating the fundamental principle of respect for frontiers inherited from colonization (*uti possidetis juris*), as well as its legal obligations concerning the land and maritime delimitation.

(*e*) That by using force against the Republic of Cameroon and, in particular, by militarily occupying parcels of Cameroonian territory in the area of Lake Chad and the Cameroonian peninsula of Bakassi, and by making repeated incursions throughout the length of the boundary between the two countries, the Federal Republic of Nigeria has violated and is violating its obligations under international treaty law and customary law.

(*f*) That the Federal Republic of Nigeria has the express duty of putting an end to its administrative and military presence in Cameroonian territory and, in particular, of effecting an immediate and unconditional evacuation of its troops from the occupied area of Lake Chad and from the Cameroonian peninsula of Bakassi and of refraining from such acts in the future.

(*g*) That in failing to comply with the Order for the indication of provisional measures rendered by the Court on 15 March 1996 the Federal Republic of Nigeria has been in breach of its international obligations.

(*h*) That the internationally wrongful acts referred to above and described in detail in the written pleadings and oral argument of the Republic of Cameroon engage the responsibility of the Federal Republic of Nigeria.

(*i*) That, consequently, on account of the material and moral injury suffered by the Republic of Cameroon reparation in a form to be determined by the Court is due from the Federal Republic of Nigeria to the Republic of Cameroon."

Cameroon further requested that the Court permit it, at a subsequent stage of the proceedings, to present an assessment of the amount of compensation due to it as reparation for the injury suffered by it as a result of the internationally wrongful acts attributable to the Federal Republic of Nigeria. The Republic of Cameroon also asked the Court to declare that the counterclaims of the Federal Republic of Nigeria are "unfounded both in fact and in law, and to reject them".

The final submissions of Nigeria read as follows:

"The Federal Republic of Nigeria respectfully requests that the Court should

1. as to the Bakassi Peninsula, *adjudge and declare*:

(*a*) that sovereignty over the Peninsula is vested in the Federal Republic of Nigeria;

(*b*) that Nigeria's sovereignty over Bakassi extends up to the boundary with Cameroon described in chapter 11 of Nigeria's Counter-Memorial.

2. as to Lake Chad, *adjudge and declare*:

(*a*) that the proposed delimitation and demarcation under the auspices of the Lake Chad Basin Commission, not having been accepted by Nigeria, is not binding upon it;

(*b*) that sovereignty over the areas in Lake Chad defined in paragraph 5.9 of Nigeria's Rejoinder and depicted in figs. 5.2 and 5.3 facing page 242 (and including the Nigerian settlements identified in paragraph 4.1 of Nigeria's Rejoinder) is vested in the Federal Republic of Nigeria;

(*c*) that in any event the process which has taken place within the framework of the Lake Chad Basin Commission, and which was intended to lead to an overall delimitation and demarcation of boundaries on Lake Chad, is legally without prejudice to the title to particular areas of the Lake Chad region inhering in Nigeria as a consequence of the historical consolidation of title and the acquiescence of Cameroon.

3. as to the central sectors of the land boundary, *adjudge and declare*:

(*a*) that the Court's jurisdiction extends to the definitive specification of the land boundary between Lake Chad and the sea;

(*b*) that the mouth of the Ebeji, marking the beginning of the land boundary, is located at the point where the north-east channel of the Ebeji flows into the feature marked 'Pond' on the Map shown as figure 7.1 of Nigeria's Rejoinder, which location is at latitude 12°31'45" N, longitude 14°13'00" E (Adindan Datum);

(*c*) that subject to the interpretations proposed in chapter 7 of Nigeria's Rejoinder, the land boundary between the mouth of the Ebeji and the point on the thalweg of the Akpa Yafe which is opposite the mid-point of the mouth of Archibong Creek is delimited by the terms of the relevant boundary instruments, namely:

(i) paragraphs 2-61 of the Thomson-Marchand Declaration, confirmed by the Exchange of Letters of 9 January 1931;

(ii) the Nigeria (Protectorate and Cameroons) Order in Council of 2 August 1946, (section 6(1) and the Second Schedule thereto);

(iii) paragraphs 13-21 of the Anglo-German Demarcation Agreement of 12 April 1913; and

(iv) articles XV to XVII of the Anglo-German Treaty of 11 March 1913; and

(*d*) that the interpretations proposed in chapter 7 of Nigeria's Rejoinder, and the associated action there identified in respect of each of the locations where the delimitation in the relevant boundary instruments is defective or uncertain, are confirmed.

4. as to the maritime boundary, *adjudge and declare*:

(*a*) that the Court lacks jurisdiction over Cameroon's maritime claim from the point at which its claim line enters waters claimed against Cameroon

by Equatorial Guinea or alternatively that Cameroon's claim is inadmissible to that extent;

(*b*) that Cameroon's claim to a maritime boundary based on the global division of maritime zones in the Gulf of Guinea is inadmissible, and that the parties are under an obligation, pursuant to articles 74 and 83 of the United Nations Law of the Sea Convention, to negotiate in good faith with a view to agreeing on an equitable delimitation of their respective maritime zones, such delimitation to take into account, in particular, the need to respect existing rights to explore and exploit the mineral resources of the continental shelf, granted by either party prior to 29 March 1994 without written protest from the other, and the need to respect the reasonable maritime claims of third States;

(*c*) the alternative, that Cameroon's claim to a maritime boundary based on the global division of maritime zones in the Gulf of Guinea is unfounded in law and is rejected;

(*d*) that, to the extent that Cameroon's claim to a maritime boundary may be held admissible in the present proceedings, Cameroon's claim to a maritime boundary to the west and south of the area of overlapping licences, as shown in figure 10.2 of Nigeria's Rejoinder, is rejected;

(*e*) that the respective territorial waters of the two States are divided by a median line boundary within the Rio del Rey;

(*f*) that, beyond the Rio del Rey, the respective maritime zones of the parties are to be delimited by a line drawn in accordance with the principle of equidistance, until the approximate point where that line meets the median line boundary with Equatorial Guinea, i.e., at approximately 4°6' N, 8°30' E.

5. as to Cameroon's claims of State responsibility, *adjudge and declare*:

that, to the extent to which any such claims are still maintained by Cameroon, and are admissible, those claims are unfounded in fact and law; and

6. as to Nigeria's counterclaims as specified in part VI of Nigeria's Counter-Memorial and in chapter 18 of Nigeria's Rejoinder, *adjudge and declare*:

that Cameroon bears responsibility to Nigeria in respect of each of those claims, the amount of reparation due therefore, if not agreed between the parties within six months of the date of judgment, to be determined by the Court in a further judgment."

Pursuant to the Court's Order of 12 October 1999, permitting Equatorial Guinea to intervene in the case, that State presented its observations to the Court during the course of the hearings.

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

The precise object of the intervention (paras. 84-93)

In respect of the "the precise object of the intervention" which the Philippines states, the Court first quotes the three objects cited above.

As regards the first of the three objects stated in the Application of the Philippines, the Court notes that similar formulations have been employed in other applications for permission to intervene, and have not been found by the Court to present a legal obstacle to intervention.

So far as the second listed object of the Philippines is concerned, the Court, in its Order of 21 October 1999 in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria)*, *Application to Intervene*, recently reaffirmed a statement of a Chamber that:

> "[s]o far as the object of [a State's] intervention is 'to inform the Court of the nature of the legal rights [of that State] which are in issue in the dispute', it cannot be said that this object is not a proper one: it seems indeed to accord with the function of intervention" (*I.C.J. Reports 1999*, p. 1034, para. 14).

As to the third object listed in its Application, the Court observes that very occasional mention was made of it during the oral pleadings. But the Philippines did not develop it nor did it contend that it could suffice alone as an "object" within the meaning of Article 81 of the Rules. The Court therefore rejects the relevance under the Statute and Rules of the third listed object.

The Court concludes that notwithstanding that the first two of the objects indicated by the Philippines for its intervention are appropriate, the Philippines has not discharged its obligation to convince the Court that specified legal interests may be affected in the particular circumstances of this case.

*

Operative paragraph (para. 95):

> "For these reasons,
>
> THE COURT,
>
> By fourteen votes to one,
>
> *Finds* that the Application of the Republic of the Philippines, filed in the Registry of the Court on 13 March 2001, for permission to intervene in the proceedings under Article 62 of the Statute of the Court, cannot be granted.
>
> IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Ranjeva, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal; *Judges ad hoc* Weeramantry, Franck;
>
> AGAINST: *Judge* Oda."

*

Judge Oda appended a dissenting opinion to the judgment; Judge Koroma a separate opinion; Judges Parra-Aranguren and Kooijmans declarations; Judges ad hoc Weeramantry and Franck separate opinions.

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

By an Order of 25 November 1999 (*I.C.J. Reports 1999*, p. 1042), the Court, taking into account the agreement of the Parties, fixed 11 September 2000 as the time limit for the filing of a Memorial by Guinea and 11 September 2001 for the filing of a Counter-Memorial by the Democratic Republic of the Congo.

By an Order of 8 September 2000 (*I.C.J. Reports 2000*, p. 146), the President of the Court, at the request of Guinea and after the views of the other Party had been ascertained, extended to 23 March 2001 and 4 October 2002 the respective time limits for that Memorial and Counter-Memorial. The Memorial was filed within the time limit thus extended.

9. *LaGrand (Germany* v. *United States of America)*

At a public sitting held on 27 June 2001, the Court delivered its judgment, a summary of which is given below, followed by the text of the operative paragraph:

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

The Court first recalls the history of the proceedings and the submissions of the Parties as set out hereabove.

History of the dispute (paras. 13-34)

The Court recalls that the brothers Karl and Walter LaGrand—German nationals who had been permanently residing in the United States since childhood—were arrested in 1982 in Arizona for their involvement in an attempted bank robbery, in the course of which the bank manager was murdered and another bank employee seriously injured. In 1984, an Arizona court convicted both of murder in the first degree and other crimes, and sentenced them to death. The LaGrands being German nationals, the Vienna Convention on Consular Relations required the competent authorities of the United States to inform them without delay of their right to communicate with the consulate of Germany. The United States acknowledged that this did not occur. In fact, the consulate was only made aware of the case in 1992 by the LaGrands themselves, who had learned of their rights from other sources. By that stage, the LaGrands were precluded because of the doctrine of "procedural default" in United States law from challenging their convictions and sentences by claiming that their rights under the Vienna Convention had been violated. Karl LaGrand was executed on 24 February 1999. On 2 March 1999, the day before the scheduled date of execution of Walter LaGrand, Germany brought the case to the International Court of Justice. On 3 March 1999, the Court made an Order indicating provisional measures (a kind of interim injunction), stating, inter alia, that the United States should take all measures at its disposal to ensure that Walter LaGrand was not executed pending a final decision of the Court. On that same day, Walter LaGrand was executed.

Jurisdiction of the Court (paras. 36-48)

The Court observes that the United States, without having raised preliminary objections under Article 79 of the Rules of Court, nevertheless presented certain objections to the jurisdiction of the Court. Germany based the jurisdiction of the Court on article I of the Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes of 24 April 1963, which reads as follows:

> "Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol."

With regard to Germany's first submission (paras. 37-42)

The Court first examines the question of its jurisdiction with respect to the first submission of Germany. Germany relies on paragraph 1 of article 36 of the Vienna Convention, which provides:

> "With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(*a*) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(*b*) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

(*c*) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action."

Germany alleges that the failure of the United States to inform the LaGrand brothers of their right to contact the German authorities "prevented Germany from exercising its rights under article 36 (1) (*a*) and (*c*) of the Convention" and violated "the various rights conferred upon the sending State vis-à-vis its nationals in prison, custody or detention as provided for in article 36 (1) (*b*) of the Convention". Germany further alleges that by breaching its obligations to inform, the United States also violated individual rights conferred on the detainees by article 36, paragraph 1 (*a*), second sentence, and by article 36, paragraph 1 (*b*). Germany accordingly claims that it "was injured in the person of its two nationals", a claim which Germany raises "as a matter of diplomatic protection on behalf of Walter and Karl LaGrand". The United States acknowledges that violation of article 36, paragraph 1 (*b*), has given rise to a dispute between the two States and recognizes that the Court has jurisdiction under the Optional Protocol to hear this dispute in so far as it concerns Germany's own rights. Concerning Germany's claims of violation of article 36, paragraph 1 (*a*) and (*c*), the United States however calls these claims "particularly misplaced" on the grounds that the "underlying conduct complained of is the same" as the claim of the violation of article 36, paragraph 1 (*b*). It contends, moreover, that "to the extent that this claim by Germany is based on the general law of diplomatic protection, it is not within the Court's jurisdiction" under the Optional Protocol because it "does not concern the interpretation or application of the Vienna Convention".

The Court does not accept the United States objections. The dispute between the Parties as to whether article 36, paragraph 1 (*a*) and (*c*), of the Vienna Convention have been violated in this case in consequence of the breach of paragraph 1 (*b*) does relate to the interpretation and application of the Convention. This is also true of the dispute as to whether paragraph 1 (*b*) creates individual rights and whether Germany has standing to assert those rights on behalf of its nationals. These are consequently disputes within the meaning of article I of the Optional Protocol. Moreover, the Court cannot accept the contention of the United States that Germany's claim based on the individual rights of the LaGrand brothers is beyond the Court's jurisdiction because diplomatic protection

is a concept of customary international law. This fact does not prevent a State party to a treaty, which creates individual rights, from taking up the case of one of its nationals and instituting international judicial proceedings on behalf of that national, on the basis of a general jurisdictional clause in such a treaty. Therefore the Court concludes that it has jurisdiction with respect to the whole of Germany's first submission.

With regard to Germany's second and third submissions (paras. 43-45)

Although the United States does not challenge the Court's jurisdiction in regard to Germany's second and third submissions, the Court observes that the third submission of Germany concerns issues that arise directly out of the dispute between the Parties before the Court over which the Court has already held that it has jurisdiction, and which are thus covered by article I of the Optional Protocol. The Court reaffirms, in this connection, what it said in its judgment in the *Fisheries Jurisdiction* case, where it declared that in order to consider the dispute in all its aspects, it might also deal with a submission that "is one based on facts subsequent to the filing of the Application, but arising directly out of the question which is the subject matter of that Application. As such it falls within the scope of the Court's jurisdiction" *(Fisheries Jurisdiction (Federal Republic of Germany* v. *Iceland), Merits, Judgment, I.C.J. Reports 1974*, p. 203, para. 72). Where the Court has jurisdiction to decide a case, it also has jurisdiction to deal with submissions requesting it to determine that an order indicating measures which seeks to preserve the rights of the Parties to this dispute has not been, complied with.

With regard to Germany's fourth submission (paras. 46-48)

The United States objects to the jurisdiction of the Court over the fourth submission in so far as it concerns a request for assurances and guarantees of non-repetition. It contends that Germany's fourth submission

> "goes beyond any remedy that the Court can or should grant, and should be rejected. The Court's power to decide cases . . . does not extend to the power to order a State to provide any 'guarantee' intended to confer additional legal rights on the Applicant State . . . The United States does not believe that it can be the role of the Court . . . to impose any obligations that are additional to or that differ in character from those to which the United States consented when it ratified the Vienna Convention."

The Court considers that a dispute regarding the appropriate remedies for the violation of the Convention alleged by Germany is a dispute that arises out of the interpretation or application of the Convention and thus is within the Court's jurisdiction. Where jurisdiction exists over a dispute on a particular matter, no separate basis for jurisdiction is required by the Court to consider the remedies a party has requested for the breach of the obligation (*Factory at Chorzów, P.C.I.J., Series A, No. 9*, p. 22). Consequently, the Court has jurisdiction in the present case with respect to the fourth submission of Germany.

Admissibility of Germany's submissions (paras. 49-63)

The United States objects to the admissibility of Germany's submissions on various grounds. First, the United States argues that Germany's second, third and fourth submissions are inadmissible because Germany seeks to have the Court "play the role of ultimate court of appeal in national criminal proceedings", a role which it

is not empowered to perform. The United States maintains that many of Germany's arguments, in particular those regarding the rule of "procedural default", ask the Court "to address and correct . . . asserted violations of United States law and errors of judgment by United States judges" in criminal proceedings in national courts.

The Court does not agree with this argument. It observes that, in the second submission, Germany asks the Court to interpret the scope of article 36, paragraph 2, of the Vienna Convention; the third submission seeks a finding that the United States violated an Order issued by this Court pursuant to Article 41 of its Statute; and in Germany's fourth submission, the Court is asked to determine the applicable remedies for the alleged violations of the Convention. Although Germany deals extensively with the practice of American courts as it bears on the application of the Convention, all three submissions seek to require the Court to do no more than apply the relevant rules of international law to the issues in dispute between the Parties to this case. The exercise of this function, expressly mandated by Article 38 of its Statute, does not convert the Court into a court of appeal of national criminal proceedings.

The United States also argues that Germany's third submission is inadmissible because of the manner in which these proceedings were brought before the Court by Germany. It notes that German consular officials became aware of the LaGrands' case in 1992, but that the issue of the absence of consular notification was not raised by Germany until 22 February 1999, two days before the date scheduled for Karl LaGrand's execution. Germany then filed the Application instituting these proceedings, together with a request for provisional measures, after normal business hours in the Registry in the evening of 2 March 1999, some 27 hours before the execution of Walter LaGrand. Germany acknowledges that delay on the part of a claimant State may render an application inadmissible, but maintains that international law does not lay down any specific time limit in that regard. It contends that it was only seven days before it filed its Application that it became aware of all the relevant facts underlying its claim, in particular, the fact that the authorities of Arizona knew of the German nationality of the LaGrands since 1982.

The Court recognizes that Germany may be criticized for the manner in which these proceedings were filed and for their timing. The Court recalls, however, that notwithstanding its awareness of the consequences of Germany's filing at such a late date, it nevertheless considered it appropriate to enter the Order of 3 March 1999, given that an irreparable prejudice appeared to be imminent. In view of these considerations, the Court considers that Germany is now entitled to challenge the alleged failure of the United States to comply with the Order. Accordingly, the Court finds that Germany's third submission is admissible.

The United States argues further that Germany's first submission, as far as it concerns its right to exercise diplomatic protection with respect to its nationals, is inadmissible on the ground that the LaGrands did not exhaust local remedies. The United States maintains that the alleged breach concerned the duty to inform the LaGrands of their right to consular access, and that such a breach could have been remedied at the trial stage, provided it was raised in a timely fashion.

The Court notes that it is not disputed that the LaGrands sought to plead the Vienna Convention in United States courts after they learned in 1992 of their rights under the Convention; it is also not disputed that by that date the procedural default rule barred the LaGrands from obtaining any remedy in respect of the violation of those rights. Counsel assigned to the LaGrands failed to raise this point earlier in a

timely fashion. However, the Court finds that the United States may not now rely on this fact in order to preclude the admissibility of Germany's first submission, as it was the United States itself which had failed to carry out its obligation under the Convention to inform the LaGrand brothers.

The United States also contends that Germany's submissions are inadmissible on the ground that Germany seeks to have a standard applied to the United States that is different from its own practice.

The Court considers that it does not need to decide whether this argument of the United States, if true, would result in the inadmissibility of Germany's submissions. It finds that the evidence adduced by the United States does not justify the conclusion that Germany's own practice fails to conform to the standards it demands from the United States in this litigation. The cases referred to entailed relatively light criminal penalties and are not evidence as to German practice where an arrested person, who has not been informed without delay of his or her rights, is facing a severe penalty as in the present case. The Court considers that the remedies for a violation of article 36 of the Vienna Convention are not necessarily identical in all situations. While an apology may be an appropriate remedy in some cases, it may in others be insufficient. The Court accordingly finds that this claim of inadmissibility must be rejected.

Merits of Germany's submissions (paras. 64-127)

Having determined that it has jurisdiction, and that the submissions of Germany are admissible, the Court then turns to the merits of each of these four submissions.

Germany's first submission (paras. 65-78)

The Court begins by quoting Germany's first submission and observes that the United States acknowledges, and does not contest Germany's basic claim, that there was a breach of its obligation under article 36, paragraph 1 (*b*), of the Convention "promptly to inform the LaGrand brothers that they could ask that a German consular post be notified of their arrest and detention".

Germany also claims that the violation by the United States of article 36, paragraph 1 (*b*), led to consequential violations of article 36, paragraph 1 (*a*) and (*c*). It points out that, when the obligation to inform the arrested person without delay of his or her right to contact the consulate is disregarded, "the other rights contained in article 36, paragraph 1, become in practice irrelevant, indeed meaningless". The United States argues that the underlying conduct complained of by Germany is one and the same, namely, the failure to inform the LaGrand brothers as required by article 36, paragraph 1 (*b*). Therefore, it disputes any other basis for Germany's claims that other provisions, such as subparagraphs (*a*) and (*c*) of article 36, paragraph 1, of the Convention, were also violated. The United States asserts that Germany's claims regarding article 36, paragraph 1 (*a*) and (*c*), are "particularly misplaced" in that the LaGrands were able to and did communicate freely with consular officials after 1992. In response, Germany asserts that it is "commonplace that one and the same conduct may result in several violations of distinct obligations". Germany further contends that there is a causal relationship between the breach of article 36 and the ultimate execution of the LaGrand brothers. It is claimed that, had Germany been properly afforded its rights under the Vienna Convention, it would have been able to intervene in time and present a "persuasive mitigation case" which "likely would have saved" the lives of the brothers. Moreover, Germany argues that, due to

the doctrine of procedural default and the high post-conviction threshold for proving ineffective counsel under United States law, Germany's intervention at a stage later than the trial phase could not "remedy the extreme prejudice created by the counsel appointed to represent the LaGrands". According to the United States, these German arguments "rest on speculation" and do not withstand analysis.

The Court observes that the violation of paragraph 1 (*b*) of article 36 will not necessarily always result in the breach of the other provisions of this article, but that the circumstances of this case compel the opposite conclusion, for the reasons indicated below, article 36, paragraph 1, the Court notes, establishes an interrelated regime designed to facilitate the implementation of the system of consular protection. It begins with the basic principle governing consular protection: the right of communication and access (art. 36, para. 1 (*a*)). This clause is followed by the provision which spells out the modalities of consular notification (art. 36, para. 1 (*b*)). Finally article 36, paragraph 1 (*c*), sets out the measures consular officers may take in rendering consular assistance to their nationals in the custody of the receiving State. It follows that when the sending State is unaware of the detention of its nationals due to the failure of the receiving State to provide the requisite consular notification without delay, which was true in the present case during the period between 1982 and 1992, the sending State has been prevented for all practical purposes from exercising its rights under article 36, paragraph 1.

Germany further contends that "the breach of article 36 by the United States did not only infringe upon the rights of Germany as a State party to the [Vienna] Convention but also entailed a violation of the individual rights of the LaGrand brothers". Invoking its right of diplomatic protection, Germany also seeks relief against the United States on this ground. The United States questions what this additional claim of diplomatic protection contributes to the case and argues that there are no parallels between the present case and cases of diplomatic protection involving the espousal by a State of economic claims of its nationals. The United States contends, furthermore, that rights of consular notification and access under the Vienna Convention are rights of States, and not of individuals, even though these rights may benefit individuals by permitting States to offer them consular assistance. It maintains that the treatment due to individuals under the Convention is inextricably linked to and derived from the right of the State, acting through its consular officer, to communicate with its nationals, and does not constitute a fundamental right or a human right.

On the basis of the text of the provisions of article 36, paragraph 1, the Court concludes that article 36, paragraph 1, creates individual rights, which, by virtue of article I of the Optional Protocol, may be invoked in the Court by the national State of the detained person. These rights were violated in the present case.

Germany's second submission (paras. 79-91)

The Court then quotes the second of Germany's submissions.

Germany argues that, under article 36, paragraph 2, of the Vienna Convention

"the United States is under an obligation to ensure that its municipal 'laws and regulations . . . enable full effect to be given to the purposes for which the rights accorded under this article are intended' [and that it] is in breach of this obligation by upholding rules of domestic law which make it impossible to

successfully raise a violation of the right to consular notification in proceedings subsequent to a conviction of a defendant by a jury".

Germany emphasizes that it is not the "procedural default" rule as such that is at issue in the present proceedings, but the manner in which it was applied in that it "deprived the brothers of the possibility to raise the violations of their right to consular notification in United States criminal proceedings". In the view of the United States: "[t]he Vienna Convention does not require States Party to create a national law remedy permitting individuals to assert claims involving the Convention in criminal proceedings"; and "[i]f there is no obligation under the Convention to create such individual remedies in criminal proceedings, the rule of procedural default—requiring that claims seeking such remedies be asserted at an appropriately early stage—cannot violate the Convention".

The Court quotes article 36, paragraph 2, of the Vienna Convention which reads as follows:

> "The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded to under this article are intended."

It finds that it cannot accept the argument of the United States which proceeds, in part, on the assumption that paragraph 2 of article 36 applies only to the rights of the sending State and not also to those of the detained individual. The Court determines that article 36, paragraph 1, creates individual rights for the detained person in addition to the rights accorded to the sending State, and consequently the reference to "rights" in paragraph 2 must be read as applying not only to the rights of the sending State, but also to the rights of the detained individual. The Court emphasizes that, in itself, the "procedural default" rule does not violate article 36 of the Vienna Convention. The problem arises when the procedural default rule does not allow the detained individual to challenge a conviction and sentence by claiming, in reliance on article 36, paragraph 1, of the Convention, that the competent national authorities failed to comply with their obligation to provide the requisite consular information "without delay", thus preventing the person from seeking and obtaining consular assistance from the sending State. The Court finds that under the circumstances of the present case the procedural default rule had the effect of preventing "full effect [from being] given to the purposes for which the rights accorded under this article are intended", and thus violated paragraph 2 of article 36.

Germany's third submission (paras. 92-116)

The Court then quotes the third of Germany's submissions and observes that, in its Memorial, Germany contended that "[p]rovisional [m]easures indicated by the International Court of Justice [were] binding by virtue of the law of the United Nations Charter and the Statute of the Court". It observes that in support of its position, Germany developed a number of arguments in which it referred to the "principle of effectiveness", to the "procedural prerequisites" for the adoption of provisional measures, to the binding nature of provisional measures as a "necessary consequence of the bindingness of the final decision", to "Article 94 (1), of the United Nations Charter", to "Article 41 (1), of the Statute of the Court" and to the "practice of the Court". The United States argues that it "did what was called for by the Court's 3 March Order, given the extraordinary and unprecedented circum-

stances in which it was forced to act". It further states that "[t]wo central factors constrained the United States ability to act. The first was the extraordinarily short time between issuance of the Court's Order and the time set for the execution of Walter LaGrand . . . The second constraining factor was the character of the United States of America as a federal republic of divided powers." The United States also alleges that the "terms of the Court's 3 March Order did not create legal obligations binding on [it]". It argues in this respect that "[t]he language used by the Court in the key portions of its Order is not the language used to create binding legal obligations" and that "the Court does not need here to decide the difficult and controversial legal question of whether its orders indicating provisional measures would be capable of creating international legal obligations if worded in mandatory . . . terms". It nevertheless maintains that those orders cannot have such effects and, in support of that view, develops arguments concerning "the language and history of Article 41 (1) of the Court's Statute and Article 94 of the Charter of the United Nations", the "Court's and State practice under these provisions", and the "weight of publicists' commentary". Lastly, the United States states that in any case, "[b]ecause of the press of time stemming from Germany's last-minute filing of the case, basic principles fundamental to the judicial process were not observed in connection with the Court's 3 March Order" and that "[t]hus, whatever one might conclude regarding a general rule for provisional measures, it would be anomalous—to say the least—for the Court to construe this Order as a source of binding legal obligations".

The Court observes that the dispute which exists between the Parties with regard to this point essentially concerns the interpretation of Article 41, which has been the subject of extensive controversy in the literature. It therefore proceeds to the interpretation of that Article. It does so in accordance with customary international law, reflected in article 31 of the 1969 Vienna Convention on the Law of Treaties. According to paragraph 1 of article 31, a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of the treaty's object and purpose.

The French text of Article 41 reads as follows:

> "1. La Cour a le pouvoir *d'indiquer*, si elle estime que les circonstances l'exigent, quelles mesures conservatoires du droit de chacun *doivent* être prises à titre provisoire.
>
> 2. En attendant l'arrêt définitif, *l'indication* de ces mesures est immédiatement notifiée aux parties et au Conseil de sécurité." (emphasis added)

The Court notes that in this text, the terms "indiquer" and "l'indication" may be deemed to be neutral as to the mandatory character of the measure concerned; by contrast the words "doivent être prises" have an imperative character.

For its part, the English version of Article 41 reads as follows:

> "1. The Court shall have the power to *indicate*, if it considers that circumstances so require, any provisional measures which *ought* to be taken to preserve the respective rights of either party.
>
> 2. Pending the final decision, notice of the measures *suggested* shall forthwith be given to the parties and to the Security Council." (emphasis added)

According to the United States, the use in the English version of "indicate" instead of "order", of "ought" instead of "must" or "shall", and of "suggested" instead of "ordered" is to be understood as implying that decisions under Article 41 lack mandatory effect. It might however be argued, having regard to the fact that in 1920

the French text was the original version, that such terms as "indicate" and "ought" have a meaning equivalent to "order" and "must" or "shall".

Finding itself faced with two texts which are not in total harmony, the Court first of all notes that according to Article 92 of the Charter, the Statute "forms an integral part of the present Charter". Under Article 111 of the Charter, the French and English texts of the latter are "equally authentic". The same is equally true of the Statute.

In cases of divergence between the equally authentic versions of the Statute, neither it nor the Charter indicates how to proceed. In the absence of agreement between the parties in this respect, it is appropriate to refer to paragraph 4 of article 33 of the Vienna Convention on the Law of Treaties, which in the view of the Court again reflects customary international law. This provision reads "when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted". The Court therefore goes on to consider the object and purpose of the Statute together with the context of Article 41.

The object and purpose of the Statute is to enable the Court to fulfil the functions provided for therein, and in particular, the basic function of judicial settlement of international disputes by binding decisions in accordance with Article 59 of the Statute. It follows from that object and purpose, as well as from the terms of Article 41 when read in their context, that the power to indicate provisional measures entails that such measures should be binding, inasmuch as the power in question is based on the necessity, when the circumstances call for it, to safeguard, and to avoid prejudice to, the rights of the parties as determined by the final judgment of the Court. The contention that provisional measures indicated under Article 41 might not be binding would be contrary to the object and purpose of that Article. A related reason which points to the binding character of orders made under Article 41 and to which the Court attaches importance, is the existence of a principle which has already been recognized by the Permanent Court of International Justice when it spoke of

> "the principle universally accepted by international tribunals and likewise laid down in many conventions . . . to the effect that the parties to a case must abstain from any measure capable of exercising a prejudicial effect in regard to the execution of the decision to be given, and, in general, not allow any step of any kind to be taken which might aggravate or extend the dispute" (*Electricity Company of Sofia and Bulgaria, Order of 5 December 1939, P.C.I.J., Series A/B, No. 79*, p. 199).

The Court does not consider it necessary to resort to the preparatory work of the Statute which, as it nevertheless points out, does not preclude the conclusion that orders under Article 41 have binding force.

The Court finally considers whether Article 94 of the United Nations Charter precludes attributing binding effect to orders indicating provisional measures. That Article reads as follows:

> "1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.
>
> "2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse

to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment."

The Court notes that the question arises as to the meaning to be attributed to the words "the decision of the International Court of Justice" in paragraph 1 of this Article; it observes that this wording could be understood as referring not merely to the Court's judgments but to any decision rendered by it, thus including orders indicating provisional measures. It could also be interpreted to mean only judgments rendered by the Court as provided in paragraph 2 of Article 94. In this regard, the fact that in Articles 56 to 60 of the Court's Statute, both the word "decision" and the word "judgment" are used does little to clarify the matter. Under the first interpretation of paragraph 1 of Article 94, the text of the paragraph would confirm the binding nature of provisional measures; whereas the second interpretation would in no way preclude their being accorded binding force under Article 41 of the Statute. The Court accordingly concludes that Article 94 of the Charter does not prevent orders made under Article 41 from having a binding character. In short, it is clear that none of the sources of interpretation referred to in the relevant Articles of the Vienna Convention on the Law of Treaties, including the preparatory work, contradict the conclusions drawn from the terms of Article 41 read in their context and in the light of the object and purpose of the Statute. Thus, the Court reaches the conclusion that orders on provisional measures under Article 41 have binding effect.

The Court then considers the question whether the United States has complied with the obligation incumbent upon it as a result of the Order of 3 March 1999.

After reviewing the steps taken by the authorities of the United States (the State Department, the United States Solicitor General, the Governor of Arizona and the United States Supreme Court) with regard to the Order of 3 March 1999, the Court concludes that the various competent United States authorities failed to take all the steps they could have taken to give effect to the Order.

The Court observes finally that in the third submission Germany requests the Court to adjudge and declare only that the United States violated its international legal obligation to comply with the Order of 3 March 1999; it contains no other request regarding that violation. Moreover, the Court points out that the United States was under great time pressure in this case, due to the circumstances in which Germany had instituted the proceedings. The Court notes moreover that at the time when the United States authorities took their decision the question of the binding character of orders indicating provisional measures had been extensively discussed in the literature, but had not been settled by its jurisprudence. The Court would have taken these factors into consideration had Germany's submission included a claim for indemnification.

Germany's fourth submission (paras. 117-127)

Finally, the Court considers the fourth of Germany's submissions and observes that Germany points out that its fourth submission has been so worded "as to . . . leave the choice of means by which to implement the remedy [it seeks] to the United States".

In reply, the United States argues as follows:

"Germany's fourth submission is clearly of a wholly different nature than its first three submissions. Each of the first three submissions seeks a judgment

and declaration by the Court that a violation of a stated international legal obligation has occurred. Such judgments are at the core of the Court's function, as an aspect of reparation. In contrast, however, to the character of the relief sought in the first three submissions, the requirement of assurances of non-repetition sought in the fourth submission has no precedent in the jurisprudence of this Court and would exceed the Court's jurisdiction and authority in this case. It is exceptional even as a non-legal undertaking in State practice, and it would be entirely inappropriate for the Court to require such assurances with respect to the duty to inform undertaken in the Consular Convention in the circumstances of this case."

It points out that "United States authorities are working energetically to strengthen the regime of consular notification at the state and local level throughout the United States, in order to reduce the chances of cases such as this recurring". The United States further observes that:

> "[e]ven if this Court were to agree that, as a result of the application of procedural default with respect to the claims of the LaGrands, the United States committed a second internationally wrongful act, it should limit that judgment to the application of that law in the particular case of the LaGrands. It should resist the invitation to require an absolute assurance as to the application of United States domestic law in all such future cases. The imposition of such an additional obligation on the United States would . . . be unprecedented in international jurisprudence and would exceed the Court's authority and jurisdiction."

The Court observes that in its fourth submission Germany seeks several assurances. First it seeks a straightforward assurance that the United States will not repeat its unlawful acts. This request does not specify the means by which non-repetition is to be assured. Additionally, Germany seeks from the United States that "in any future cases of detention of or criminal proceedings against German nationals, the United States will ensure in law and practice the effective exercise of the rights under article 36 of the Vienna Convention on Consular Relations". The Court notes that this request goes further, for, by referring to the law of the United States, it appears to require specific measures as a means of preventing recurrence. Germany finally requests that "[i]n particular in cases involving the death penalty, this requires the United States to provide effective review of and remedies for criminal convictions impaired by a violation of the rights under article 36", the Court observes that this request goes even further, since it is directed entirely towards securing specific measures in cases involving the death penalty.

In relation to the general demand for an assurance of non-repetition, the Court observes that it has been informed by the United States of the "substantial measures [which it is taking] aimed at preventing any recurrence" of the breach of article 36, paragraph 1 (*b*).

The Court notes that the United States has acknowledged that, in the case of the LaGrand brothers, it did not comply with its obligations to give consular notification. The United States has presented an apology to Germany for this breach. The Court considers however that an apology is not sufficient in this case, as it would not be in other cases where foreign nationals have not been advised without delay of their rights under article 36, paragraph 1, of the Vienna Convention and have been subjected to prolonged detention or sentenced to severe penalties. In this respect, the Court has taken note of the fact that the United States repeated in all phases of these

proceedings that it is carrying out a vast and detailed programme in order to ensure compliance by its competent authorities at the federal as well as at the state and local levels with its obligation under article 36 of the Vienna Convention. The United States has provided the Court with information, which it considers important, on its programme. If a State, in proceedings before this Court, repeatedly refers as did the United States to substantial activities which it is carrying out in order to achieve compliance with certain obligations under a treaty, then this expresses a commitment to follow through with the efforts in this regard. The programme in question certainly cannot provide an assurance that there will never again be a failure by the United States to observe the obligation of notification under article 36 of the Vienna Convention. But no State could give such a guarantee and Germany does not seek it. The Court considers that the commitment expressed by the United States to ensure implementation of the specific measures adopted in performance of its obligations under article 36, paragraph 1 (*b*), must be regarded as meeting Germany's request for a general assurance of non-repetition.

The Court then examines the other assurances sought by Germany in its fourth submission. The Court observes in this regard that it can determine the existence of a violation of an international obligation. If necessary, it can also hold that a domestic law has been the cause of this violation. In the present case the Court has made its findings of violations of the obligations under article 36 of the Vienna Convention when it dealt with the first and the second submission of Germany. But it has not found that a United States law, whether substantive or procedural in character, is inherently inconsistent with the obligations undertaken by the United States in the Vienna Convention. In the present case the violation of article 36, paragraph 2, was caused by the circumstances in which the procedural default rule was applied, and not by the rule as such. However, the Court considers in this respect that if the United States, notwithstanding its commitment referred to above, should fail in its obligation of consular notification to the detriment of German nationals, an apology would not suffice in cases where the individuals concerned have been subjected to prolonged detention or convicted and sentenced to severe penalties. In the case of such a conviction and sentence, it would be incumbent upon the United States to allow the review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth in the Convention. This obligation can be carried out in various ways. The choice of means must be left to the United States.

*

Operative paragraph (para. 128):

"For these reasons,

THE COURT,

(1) By fourteen votes to one,

Finds that it has jurisdiction, on the basis of article I of the Optional Protocol concerning the Compulsory Settlement of Disputes to the Vienna Convention on Consular Relations of 24 April 1963, to entertain the Application filed by the Federal Republic of Germany on 2 March 1999;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Oda, Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Kooijmans, Rezek, Al-Khasawneh, Buergenthal;

AGAINST: *Judge* Parra-Aranguren;

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

Finds that the first submission of the Federal Republic of Germany is admissible;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Kooijmans, Rezek, Al-Khasawneh, Buergenthal;

AGAINST: *Judges* Oda, Parra-Aranguren;

(*b*) By fourteen votes to one,

Finds that the second submission of the Federal Republic of Germany is admissible;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal;

AGAINST: *Judge* Oda;

(*c*) By twelve votes to three,

Finds that the third submission of the Federal Republic of Germany is admissible;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Kooijmans, Rezek, Al-Khasawneh;

AGAINST: *Judges* Oda, Parra-Aranguren, Buergenthal;

(*d*) By fourteen votes to one.

Finds that the fourth submission of the Federal Republic of Germany is admissible;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Bedjaoui, Ranjeva, Herczegh. Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal;

AGAINST: *Judge* Oda;

(3) By fourteen votes to one,

Finds that, by not informing Karl and Walter LaGrand without delay following their arrest of their rights under article 36, paragraph 1 (*b*), of the Convention, and by thereby depriving the Federal Republic of Germany of the possibility, in a timely fashion, to render the assistance provided for by the Convention to the individuals concerned, the United States of America breached its obligations to the Federal Republic of Germany and to the LaGrand brothers under article 36, paragraph 1;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal;

AGAINST: *Judge* Oda;

(4) By fourteen votes to one,

Finds that, by not permitting the review and reconsideration, in the light of the rights set forth in the Convention, of the convictions and sentences of the LaGrand brothers after the violations referred to in paragraph (3) above had

been established, the United States of America breached its obligation to the Federal Republic of Germany and to the LaGrand brothers under article 36, paragraph 2, of the Convention;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal;

AGAINST: *Judge* Oda;

(5) By thirteen votes to two,

Finds that, by failing to take all measures at its disposal to ensure that Walter LaGrand was not executed pending the final decision of the International Court of Justice in the case, the United States of America breached the obligation incumbent upon it under the Order indicating provisional measures issued by the Court on 3 March 1999;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Kooijmans, Rezek, Al-Khasawneh, Buergenthal;

AGAINST: *Judges* Oda, Parra-Aranguren;

(6) Unanimously,

Takes note of the commitment undertaken by the United States of America to ensure implementation of the specific measures adopted in performance of its obligations under article 36, paragraph 1 (*b*), of the Convention; and *finds* that this commitment must be regarded as meeting the Federal Republic of Germany's request for a general assurance of non-repetition;

(7) By fourteen votes to one,

Finds that, should nationals of the Federal Republic of Germany nonetheless be sentenced to severe penalties, without their rights under article 36, paragraph 1 (*b*), of the Convention having been respected, the United States of America, by means of its own choosing, shall allow the review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth in that Convention.

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal;

AGAINST: *Judge* Oda."

*

President Guillaume appended a declaration to the judgment; Vice-President Shi a separate opinion; Judge Oda a dissenting opinion; Judges Koroma and Parra-Aranguren separate opinions; and Judge Buergenthal a dissenting opinion.

10-17. *Legality of Use of Force (Yugoslavia* v. *Belgium) (Yugoslavia* v. *Canada) (Yugoslavia* v. *France) (Yugoslavia* v. *Germany) (Yugoslavia* v. *Italy) (Yugoslavia* v. *Netherlands) (Yugoslavia* v. *Portugal) (Yugoslavia* v. *United Kingdom)*

By Orders of 8 September 2000 (*I.C.J. Reports 2000*, pp. 149, 152, 155, 158, 161, 164, 167 and 170), the Vice-President of the Court, Acting President, taking

account of the views of the Parties and the special circumstances of the cases, fixed 5 April 2001 as the time limit for the filing, in each of the cases, of a written statement by Yugoslavia on the preliminary objections raised by the Respondent State concerned.

By Orders of 21 February 2001 (*I.C.J. Reports 2001*, pp. 13, 16, 19, 22, 25, 28, 31 and 34) and 20 March 2002 (*I.C.J. Reports 2002*, pp. 192, 195, 198, 201, 204, 207, 210 and 213), the Court, in each of the cases, taking account of the agreement of the Parties and of the circumstances of the case, extended that time limit to 5 April 2002 and 7 April 2003 respectively.

18. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*[107]

In each of the two cases concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Burundi) (Democratic Republic of the Congo* v. *Rwanda)*, the Democratic Republic of the Congo, by letters dated 15 January 2001, notified the Court that it wished to discontinue the proceedings and stated that it "reserve[d] the right to invoke subsequently new grounds of jurisdiction of the Court".

After, in each of the two cases, the respondent Party had informed the Court that it concurred in the Democratic Republic of the Congo's discontinuance, the President of the Court, in Orders of 30 January 2001 (*I.C.J. Reports 2001*, pp. 3, 6), placed the discontinuance by the Democratic Republic of the Congo on record and ordered the removal of the cases from the List.

In the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*, the Court, taking into account the agreement of the Parties as expressed at a meeting held with them by the President of the Court on 19 October 1999, fixed, by an Order of 21 October 1999 (*I.C.J. Reports 1999*, p. 1022), 21 July 2000 as the time limit for the filing of a Memorial by the Congo and 21 April 2001 for the filing of a Counter-Memorial by Uganda. The Memorial of the Democratic Republic of the Congo was filed within the prescribed time limit.

On 19 June 2000, the Congo, in the same case against Uganda, filed a request for the indication of provisional measures, stating that "since 5 June last, the resumption of fighting between the armed troops of . . . Uganda and another foreign army has caused considerable damage to the Congo and to its population" while "these tactics have been unanimously condemned, in particular by the United Nations Security Council".

In the request the Democratic Republic of the Congo maintained that "despite promises and declarations of principle . . . Uganda has pursued its policy of aggression, brutal armed attacks of oppression and looting" and that "this is moreover the third Kisangani war, coming after those of August 1999 and May 2000 and having been instigated by the Republic of Uganda". The Congo observed that these acts "represent just one further episode constituting evidence of the military and paramilitary intervention, and of occupation, commenced by the Republic of Uganda in August 1998". It further stated that "each passing day causes to the Democratic Republic of the Congo and its inhabitants grave and irreparable prejudice" and that "it is urgent that the rights of the Democratic Republic of the Congo be safeguarded".

The Democratic Republic of the Congo requested the Court to indicate the following provisional measures:

"(1) the Government of the Republic of Uganda must order its army to withdraw immediately and completely from Kisangani;

(2) the Government of the Republic of Uganda must order its army to cease forthwith all fighting or military activity on the territory of the Democratic Republic of the Congo and to withdraw immediately and completely from that territory, and must forthwith desist from providing any direct or indirect support to any State, group, organization, movement or individual engaged or planning to engage in military activities on the territory of the Democratic Republic of the Congo;

(3) the Government of the Republic of Uganda must take all measures in its power to ensure that any units, forces or agents are or could be under its authority or which enjoy or could enjoy its support, together with organizations or persons which could be under its control, authority or influence, desist forthwith from committing or inciting the commission of war crimes or any other oppressive or unlawful act against all persons on the territory of the Democratic Republic of the Congo;

(4) the Government of the Republic of Uganda must forthwith discontinue any act having the aim or effect of disrupting, interfering with or hampering actions intended to give the population of the occupied zones the benefit of their fundamental human rights, and in particular their rights to health and education;

(5) the Government of the Republic of Uganda must cease forthwith all illegal exploitation of the natural resources of the Democratic Republic of the Congo and any illegal transfer of assets, equipment or persons to its territory;

(6) the Government of the Republic of Uganda must henceforth respect in full the right of the Democratic Republic of the Congo to sovereignty, political independence and territorial integrity, and the fundamental rights and freedoms of all persons on the territory of the Democratic Republic of the Congo."

By letters of the same date, 19 June 2000, the President of the Court, Judge Gilbert Guillaume, acting in conformity with Article 74, paragraph 4, of the Rules of Court, drew "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".

Public sittings to hear the oral observations of the Parties on the request for the indication of provisional measures were held on 26 and 28 June 2000. At a public sitting, held on 1 July 2000, the Court rendered its Order on the request for provisional measures made by the Democratic Republic of the Congo, by which it indicated that both Parties should, forthwith, prevent and refrain from any action, and in particular any armed action, which might prejudice the rights of the other Party in respect of whatever judgment the Court might render in the case or which might aggravate or extend the dispute before the Court or make it more difficult to resolve; that both Parties should, forthwith, take all measures necessary to comply with all of their obligations under international law, in particular those under the Charter of the United Nations and the Charter of the Organization of African Unity, and with United Nations Security Council resolution 1304 (2000) of 16 June 2000; and that both Parties should, forthwith, take all measures necessary to ensure full respect within the zone of conflict for fundamental human rights and for the applicable provisions of humanitarian law.

Judges Oda and Koroma appended declarations to the Order of the Court.

The Democratic Republic of the Congo chose Mr. Joe Verhoeven and Uganda Mr. James L. Kateka to sit as judges ad hoc.

Within the time limit of 21 April 2001 fixed by the Court's Order of 21 October 1999 (*I.C.J. Reports 1999*, p. 1022), Uganda filed its Counter-Memorial. The Counter-Memorial contained counterclaims.

By an Order of 29 November 2001 (*I.C.J. Reports 2001*, p. 660), the Court found that two of the counterclaims submitted by Uganda against the Democratic Republic of the Congo were "admissible as such and [formed] part of the current proceedings", but that the third was not. In view of these conclusions, the Court considered it necessary for the Democratic Republic of the Congo to file a Reply and Uganda a Rejoinder, addressing the claims of both Parties, and fixed 29 May 2002 as the time limit for the filing of the Reply and 29 November 2002 for the Rejoinder. Further, in order to ensure strict equality between the Parties, the Court reserved the right of the Democratic Republic of the Congo to present its views in writing a second time on the Uganda counterclaims, in an additional pleading to be the subject of a subsequent Order. Judge ad hoc Verhoeven appended a declaration to the Order. The Reply was filed within the time limit thus fixed.

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

By an Order of 10 March 2000 (*I.C.J. Reports 2000*, p. 3), the President of the Court, at the request of Croatia and taking into account the views expressed by Yugoslavia, extended the time limits to 14 September 2000 for the Memorial and 14 September 2001 for the Counter-Memorial.

By an Order of 27 June 2000 (*I.C.J. Reports 2000*, p. 108), the Court, at the request of Croatia and taking into account the views expressed by Yugoslavia, again extended the time limits, to 14 March 2001 for the Memorial of Croatia and to 16 September 2002 for the Counter-Memorial of Yugoslavia. The Memorial of Croatia was filed within the time limit thus extended.

Croatia chose Mr. Budislav Vukas to sit as judge ad hoc.

20. *Maritime Delimitation between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras)*

By an Order of 21 March 2000 (*I.C.J. Reports 2000*, p. 6), the Court, taking into account the agreement of the Parties, fixed 21 March 2001 as the time limit for the filing of the Memorial of Nicaragua and 21 March 2002 for the filing of the Counter-Memorial by Honduras. The Memorial of Nicaragua was filed within the prescribed time limit.

Copies of the pleadings and documents annexed have been made available to the Government of Colombia, at its request.

21. *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo* v. *Belgium)*

By an Order of 13 December 2000 (*I.C.J. Reports 2000*, p. 235), the President of the Court, taking account of the agreement of the Parties, fixed 15 March 2001 and 31 May 2001 as the time limits for the filing of the Memorial of the Democratic Republic of the Congo and the Counter-Memorial of Belgium respectively.

By an Order of 14 March 2001 (*I.C.J. Reports 2001*, p. 37), the Court, at the request of the Democratic Republic of the Congo and taking account of the reasons given by it and of the agreement of the Parties, extended those time limits to 17 April 2001 and 31 July 2001 respectively.

By an Order of 12 April 2001 (*I.C.J. Reports 2001*, p. 463), the President of the Court, at the request of the Democratic Republic of the Congo and taking account of the reasons given by it and of the agreement of the Parties, further extended those time limits to 17 May 2001 for the Memorial of the Democratic Republic of the Congo and 17 September 2001 for Belgium's Counter-Memorial. The Memorial of the Democratic Republic of the Congo was filed within the time limit thus extended.

By an Order of 27 June 2001 (*I.C.J. Reports 2001*, p. 559), the Court rejected a request by Belgium seeking to derogate from the agreed procedure in the case and extended to 28 September 2001 the time limit for the filing by the latter of a Counter-Memorial addressing both questions of jurisdiction and admissibility and the merits of the dispute. It further fixed 15 October 2001 as the date for the opening of the hearings. The Counter-Memorial of Belgium was filed within the prescribed time limit.

Public sittings to hear the oral arguments of the Parties were held from 15 to 19 October 2001.

At the conclusion of those hearings the Democratic Republic of the Congo requested that the Court adjudge and declare that:

> "1. by issuing and internationally circulating the arrest warrant of 11 April 2000 against Mr. Abdulaye Yerodia Ndombasi, Belgium committed a violation in regard to the Democratic Republic of the Congo of the rule of customary international law concerning the absolute inviolability and immunity from criminal process of incumbent foreign ministers; in so doing, it violated the principle of sovereign equality among States;
>
> 2. a formal finding by the Court of the unlawfulness of that act constitutes an appropriate form of satisfaction, providing reparation for the consequent moral injury to the Democratic Republic of the Congo;
>
> 3. the violations of international law underlying the issue and international circulation of the arrest warrant of 11 April 2000 preclude any State, including Belgium, from executing it;
>
> 4. Belgium shall be required to recall and cancel the arrest warrant of 11 April 2000 and to inform the foreign authorities to whom the warrant was circulated that Belgium renounces its request for their cooperation in executing the unlawful warrant."

The final submissions of Belgium read as follows:

> "For the reasons stated in the Counter-Memorial of Belgium and in its oral submissions, Belgium requests the Court, as a preliminary matter, to adjudge and declare that the Court lacks jurisdiction in this case and/or that the Application by the Democratic Republic of the Congo against Belgium is inadmissible.
>
> If, contrary to the submissions of Belgium with regard to the Court's jurisdiction and the admissibility of the Application, the Court concludes that it does have jurisdiction in this case and that the Application by the Democratic Republic of the Congo is admissible, Belgium requests the Court to reject the submissions of the Democratic Republic of the Congo on the merits of the case and to dismiss the Application."

At a public sitting of 14 February 2002, the Court delivered its judgment (*I.C.J. Reports 2002*, p. 3), a summary of which is given below, followed by the text of the operative paragraph.

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

The Court first recalls the history of the proceedings and the submissions of the Parties as set out hereabove.

Background to the case (paras. 13-21)

On 11 April 2000 an investigating judge of the Brussels *Tribunal de première instance* issued "an international arrest warrant in absentia" against Mr. Abdulaye Yerodia Ndombasi, charging him, as perpetrator or co-perpetrator, with offences constituting grave breaches of the Geneva Conventions of 1949 and of the Additional Protocols thereto, and with crimes against humanity. The arrest warrant was circulated internationally through Interpol.

At the time when the arrest warrant was issued Mr. Yerodia was the Minister for Foreign Affairs of the Congo.

The crimes with which Mr. Yerodia was charged were punishable in Belgium under the Law of 16 June 1993 "concerning the Punishment of Grave Breaches of the International Geneva Conventions of 12 August 1949 and of Protocols I and II of 8 June 1977 Additional Thereto", as amended by the Law of 19 February 1999 "concerning the Punishment of Serious Violations of International Humanitarian Law" (hereinafter referred to as the "Belgian Law").

On 17 October 2000, the Congo instituted proceedings before the International Court of Justice, requesting the Court "to declare that the Kingdom of Belgium shall annul the international arrest warrant issued on 11 April 2000". After the proceedings were instituted, Mr. Yerodia ceased to hold office as Minister for Foreign Affairs, and subsequently ceased to hold any ministerial office.

In its Application instituting proceedings, the Congo relied on two separate legal grounds. First, it claimed that "[t]he *universal jurisdiction* that the Belgian State attributes to itself under Article 7 of the Law in question" constituted a "[v]iolation of the principle that a State may not exercise its authority on the territory of another State and of the principle of sovereign equality among all Members of the United Nations". Secondly, it claimed that "[t]he non-recognition, on the basis of article 5 . . . of the Belgian Law, of the immunity of a Minister for Foreign Affairs in office" constituted a "[v]iolation of the diplomatic immunity of the Minister for Foreign Affairs of a sovereign State". However, the Congo's Memorial and its final submissions refer only to a violation "in regard to the . . . Congo of the rule of customary international law concerning the absolute inviolability and immunity from criminal process of incumbent foreign ministers".

Objections of Belgium relating to jurisdiction, mootness and admissibility (paras. 22-44)

Belgium's first objection (paras. 23-28)

The Court begins by considering the first objection presented by Belgium, which reads as follows:

"That, in the light of the fact that Mr. Yerodia Ndombasi is no longer either Minister for Foreign Affairs of the [Congo] or a minister occupying any other position in the . . . Government [of the Congo], there is no longer a 'legal dispute' between the Parties within the meaning of this term in the Optional Clause Declarations of the Parties and that the Court accordingly lacks jurisdiction in this case."

The Court recalls that, according to its settled jurisprudence, its jurisdiction must be determined at the time that the act instituting proceedings was filed. Thus, if the Court has jurisdiction on the date the case is referred to it, it continues to do so regardless of subsequent events. Such events might lead to a finding that an application has subsequently become moot and to a decision not to proceed to judgment on the merits, but they cannot deprive the Court of jurisdiction.

The Court then finds that, on the date that the Congo's Application instituting these proceeding was filed, each of the Parties was bound by a declaration of acceptance of compulsory jurisdiction, filed in accordance with Article 36, paragraph 2, of the Statute of the Court: Belgium by a declaration of 17 June 1958 and the Congo by a declaration of 8 February 1989. Those declarations contained no reservation applicable to the present case. The Court further observes that it is, moreover, not contested by the Parties that at the material time there was a legal dispute between them concerning the international lawfulness of the arrest warrant of 11 April 2000 and the consequences to be drawn if the warrant was unlawful. The Court accordingly concludes that at the time that it was seized of the case it had jurisdiction to deal with it, and that it still has such jurisdiction, and that Belgium's first objection must therefore be rejected.

Belgium's second objection (paras. 29-32)

The second objection presented by Belgium is the following:

"That in the light of the fact that Mr. Yerodia Ndombasi is no longer either Minister for Foreign Affairs of the [Congo] or a minister occupying any other position in the . . . Government [of the Congo], the case is now without object and the Court should accordingly decline to proceed to judgment on the merits of the case."

The Court notes that it has already affirmed on a number of occasions that events occurring subsequent to the filing of an application may render the application without object such that the Court is not called upon to give a decision thereon. However, the Court considers that this is not such a case. It finds that the change which has occurred in the situation of Mr. Yerodia has not in fact put an end to the dispute between the Parties and has not deprived the Application of its object. The Congo argues that the arrest warrant issued by the Belgian judicial authorities against Mr. Yerodia was and remains unlawful. It asks the Court to hold that the warrant is unlawful, thus providing redress for the moral injury which the warrant allegedly caused to it. The Congo also continues to seek the cancellation of the warrant. For its part, Belgium contends that it did not act in violation of international law and it disputes the Congo's submissions. In the view of the Court, it follows from the foregoing that the Application of the Congo is not now without object and that accordingly the case is not moot. Belgium's second objection is accordingly rejected.

Belgium's third objection (paras. 33-36)

The third Belgian objection is put as follows:

"That the case as it now stands is materially different to that set out in the [Congo]'s Application instituting proceedings and that the Court accordingly lacks jurisdiction in the case and/or that the application is inadmissible."

The Court notes that, in accordance with settled jurisprudence, it "cannot, in principle, allow a dispute brought before it by application to be transformed by amendments in the submissions into another dispute which is different in character". However, the Court considers that in the present case the facts underlying the Application have not changed in a way that produced such a transformation in the dispute brought before it. The question submitted to the Court for decision remains whether the issue and circulation of the arrest warrant by the Belgian judicial authorities against a person who was at that time the Minister for Foreign Affairs of the Congo were contrary to international law. The Congo's final submissions arise "directly out of the question which is the subject matter of that Application". In these circumstances, the Court considers that Belgium cannot validly maintain that the dispute brought before the Court was transformed in a way that affected its ability to prepare its defence or that the requirements of the sound administration of justice were infringed. Belgium's third objection is accordingly rejected.

Belgium's fourth objection (paras. 37-40)

The fourth Belgian objection reads as follows:

"That, in the light of the new circumstances concerning Mr. Yerodia Ndombasi, the case has assumed the character of an action of diplomatic protection but one in which the individual being protected has failed to exhaust local remedies, and that the Court accordingly lacks jurisdiction in the case and/or that the application is inadmissible."

The Court notes that the Congo has never sought to invoke before it Mr. Yerodia's personal rights. It considers that, despite the change in professional situation of Mr. Yerodia, the character of the dispute submitted to the Court by means of the Application has not changed: the dispute still concerns the lawfulness of the arrest warrant issued on 11 April 2000 against a person who was at the time Minister for Foreign Affairs of the Congo, and the question whether the rights of the Congo have or have not been violated by that warrant. The Court finds that, as the Congo is not acting in the context of protection of one of its nationals, Belgium cannot rely upon the rules relating to the exhaustion of local remedies.

In any event, the Court recalls that an objection based on non-exhaustion of local remedies relates to the admissibility of the application. Under settled jurisprudence, the critical date for determining the admissibility of an application is the date on which it is filed. Belgium accepts that, on the date on which the Congo filed the Application instituting proceedings, the Congo had a direct legal interest in the matter, and was asserting a claim in its own name. Belgium's fourth objection is accordingly rejected.

Belgium's subsidiary argument concerning the non ultra petita *rule* (paras. 41-43)

As a subsidiary argument, Belgium further contends that "[i]n the event that the Court decides that it does have jurisdiction in this case and that the application is admissible, . . . the *non ultra petita* rule operates to limit the jurisdiction of the Court to those issues that are the subject of the [Congo]'s final submissions".

Belgium points out that the Congo initially advanced a twofold argument, based, on the one hand, on the Belgian judge's lack of jurisdiction and, on the other, on the immunity from jurisdiction enjoyed by its Minister for Foreign Affairs. According to Belgium, the Congo now confines itself to arguing the latter point, and the Court consequently cannot rule on the issue of universal jurisdiction in any decision it renders on the merits of the case.

The Court recalls the well-established principle that "it is the duty of the Court not only to reply to the questions as stated in the final submissions of the parties, but also to abstain from deciding points not included in those submissions". The Court observes that, while it is thus not entitled to decide upon questions not asked of it, the *non ultra petita* rule nonetheless cannot preclude the Court from addressing certain legal points in its reasoning. Thus in the present case the Court may not rule, in the operative part of its judgment, on the question whether the disputed arrest warrant, issued by the Belgian investigating judge in exercise of his purported universal jurisdiction, complied in that regard with the rules and principles of international law governing the jurisdiction of national courts. This does not mean, however, that the Court may not deal with certain aspects of that question in the reasoning of its judgment, should it deem this necessary or desirable.

Merits of the case (paras. 45-71)

As indicated above, in its Application instituting these proceedings, the Congo originally challenged the legality of the arrest warrant of 11 April 2000 on two separate grounds: on the one hand, Belgium's claim to exercise a universal jurisdiction and, on the other, the alleged violation of the immunities of the Minister for Foreign Affairs of the Congo then in office. However, in its submissions in its Memorial, and in its final submissions at the close of the oral proceedings, the Congo invokes only the latter ground.

The Court observes that, as a matter of logic, the second ground should be addressed only once there has been a determination in respect of the first, since it is only where a State has jurisdiction under international law in relation to a particular matter that there can be any question of immunities in regard to the exercise of that jurisdiction. However, in the present case, and in view of the final form of the Congo's submissions, the Court first addresses the question whether, assuming that it had jurisdiction under international law to issue and circulate the arrest warrant of 11 April 2000, Belgium in so doing violated the immunities of the then Minister for Foreign Affairs of the Congo.

Immunity and inviolability of an incumbent Foreign Minister in general (paras. 47-55)

The Court observes at the outset that in international law it is firmly established that, as also diplomatic and consular agents, certain holders of high-ranking office in a State, such as the Head of State, Head of Government and Minister for Foreign Affairs, enjoy immunities from jurisdiction in other States, both civil and criminal. For the purposes of the present case, it is only the immunity from criminal jurisdiction and the inviolability of an incumbent Minister for Foreign Affairs that fall for the Court to consider.

The Court notes that a certain number of treaty instruments were cited by the Parties in this regard, including the Vienna Convention on Diplomatic Relations of 18 April 1961 and the New York Convention on Special Missions of 8 December

1969. The Court finds that these conventions provide useful guidance on certain aspects of the question of immunities, but that they do not contain any provision specifically defining the immunities enjoyed by Ministers for Foreign Affairs. It is consequently on the basis of customary international law that the Court must decide the questions relating to the immunities of such Ministers raised in the present case.

In customary international law, the immunities accorded to Ministers for Foreign Affairs are not granted for their personal benefit, but to ensure the effective performance of their functions on behalf of their respective States. In order to determine the extent of these immunities, the Court must therefore first consider the nature of the functions exercised by a Minister for Foreign Affairs. After an examination of those functions, the Court concludes that they are such that, throughout the duration of his or her office, a Minister for Foreign Affairs when abroad enjoys full immunity from criminal jurisdiction and inviolability. That immunity and that inviolability protect the individual concerned against any act of authority of another State which would hinder him or her in the performance of his or her duties.

The Court finds that in this respect no distinction can be drawn between acts performed by a Minister for Foreign Affairs in an "official" capacity and those claimed to have been performed in a "private capacity", or, for that matter, between acts performed before the person concerned assumed office as Minister for Foreign Affairs and acts committed during the period of office. Thus, if a Minister for Foreign Affairs is arrested in another State on a criminal charge, he or she is clearly thereby prevented from exercising the functions of his or her office. Furthermore, even the mere risk that by travelling to or transiting another State, a Minister for Foreign Affairs might be exposing himself or herself to legal proceedings could deter the Minister from travelling internationally when required to do so for the purposes of the performance of his or her official functions.

The Court then addresses Belgium's argument that immunities accorded to incumbent Ministers for Foreign Affairs can in no case protect them where they are suspected of having committed war crimes or crimes against humanity.

The Court states that it has carefully examined State practice, including national legislation and those few decisions of national higher courts, such as the House of Lords in the United Kingdom or the French Court of Cassation, and that it has been unable to deduce from this practice that there exists under customary international law any form of exception to the rule according immunity from criminal jurisdiction and inviolability to incumbent Ministers for Foreign Affairs, where they are suspected of having committed war crimes or crimes against humanity. The Court adds that it has also examined the rules concerning the immunity or criminal responsibility of persons having an official capacity contained in the legal instruments creating international criminal tribunals, and which are specifically applicable to the latter (see Charter of the International Military Tribunal of Nuremberg, art. 7; Charter of the International Military Tribunal of Tokyo, art. 6; Statute of the International Criminal Tribunal for the Former Yugoslavia, art. 7, para. 2; Statute of the International Criminal Tribunal for Rwanda, art. 6, para. 2; Statute of the International Criminal Court, art. 27), and that it finds that these rules likewise do not enable it to conclude that any such exception exists in customary international law in regard to national courts. Finally, the Court observes that none of the decisions of the Nuremberg and Tokyo international military tribunals, or of the International Criminal Tribunal for the Former Yugoslavia, cited by Belgium deal with the question of the immunities of incumbent Ministers for Foreign Affairs before national

courts where they are accused of having committed war crimes or crimes against humanity. The Court accordingly notes that those decisions are in no way at variance with the findings it has reached above. The Court accordingly does not accept Belgium's argument in this regard.

It further notes that the rules governing the jurisdiction of national courts must be carefully distinguished from those governing jurisdictional immunities: jurisdiction does not imply absence of immunity, while absence of immunity does not imply jurisdiction. Thus, although various international conventions on the prevention and punishment of certain serious crimes impose on States obligations of prosecution or extradition, thereby requiring them to extend their criminal jurisdiction, such extension of jurisdiction in no way affects immunities under customary international law, including those of Ministers for Foreign Affairs. The Court emphasizes, however, that the *immunity* from jurisdiction enjoyed by incumbent Ministers for Foreign Affairs does not mean that they enjoy *impunity* in respect of any crimes they might have committed, irrespective of their gravity. Jurisdictional immunity may well bar prosecution for a certain period or for certain offences; it cannot exonerate the person to whom it applies from all criminal responsibility. Accordingly, the immunities enjoyed under international law by an incumbent or former Minister for Foreign Affairs do not represent a bar to criminal prosecution in certain circumstances. The Court refers to circumstances where such persons are tried in their own countries, where the State which they represent or have represented decides to waive that immunity, where such persons no longer enjoy all of the immunities accorded by international law in other States after ceasing to hold the office of Minister for Foreign Affairs, and where such persons are subject to criminal proceedings before certain international criminal courts, where they have jurisdiction.

The issue and circulation of the arrest warrant of 11 April 2000 (paras. 62-71)

Given the conclusions it has reached above concerning the nature and scope of the rules governing the immunity from criminal jurisdiction enjoyed by incumbent Ministers for Foreign Affairs, the Court then considers whether in the present case the issue of the arrest warrant of 11 April 2000 and its international circulation violated those rules. The Court recalls in this regard that the Congo requests it, in its first final submission, to adjudge and declare that:

> "[B]y issuing and internationally circulating the arrest warrant of 11 April 2000 against Mr. Abdulaye Yerodia Ndombasi, Belgium committed a violation in regard to the Democratic Republic of the Congo of the rule of customary international law concerning the absolute inviolability and immunity from criminal process of incumbent foreign ministers; in so doing, it violated the principle of sovereign equality among States."

After examining the terms of the arrest warrant, the Court notes that its *issuance*, as such, represents an act by the Belgian judicial authorities intended to enable the arrest on Belgian territory of an incumbent Minister for Foreign Affairs on charges of war crimes and crimes against humanity. The fact that the warrant is enforceable is clearly apparent from the order given in it to "all bailiffs and agents of public authority . . . to execute this arrest warrant" and from the assertion in the warrant that "the position of Minister for Foreign Affairs currently held by the accused does not entail immunity from jurisdiction and enforcement". The Court notes that the warrant did admittedly make an exception for the case of an official visit by Mr. Yerodia to Belgium, and that Mr. Yerodia never suffered arrest in Belgium. The

Court considers itself bound, however, to find that, given the nature and purpose of the warrant, its mere issue violated the immunity which Mr. Yerodia enjoyed as the Congo's incumbent Minister for Foreign Affairs. The Court accordingly concludes that the issue of the warrant constituted a violation of an obligation of Belgium towards the Congo, in that it failed to respect the immunity of that Minister and, more particularly, infringed the immunity from criminal jurisdiction and the inviolability then enjoyed by him under international law.

The Court also notes that Belgium admits that the purpose of the international *circulation* of the disputed arrest warrant was "to establish a legal basis for the arrest of Mr. Yerodia . . . abroad and his subsequent extradition to Belgium". The Court finds that, as in the case of the warrant's issue, its international circulation from June 2000 by the Belgian authorities, given its nature and purpose, effectively infringed Mr. Yerodia's immunity as the Congo's incumbent Minister for Foreign Affairs and was furthermore liable to affect the Congo's conduct of its international relations. The Court concludes that the circulation of the warrant, whether or not it significantly interfered with Mr. Yerodia's diplomatic activity, constituted a violation of an obligation of Belgium towards the Congo, in that it failed to respect the immunity of the incumbent Minister for Foreign Affairs of the Congo and. more particularly, infringed the immunity from criminal jurisdiction and inviolability then enjoyed by him under international law.

Remedies (paras. 72-77)

The Court then addresses the issue of the remedies sought by the Congo on account of Belgium's violation of the above-mentioned rules of international law. (Cf. the second, third and fourth submissions of the Congo reproduced above.)

The Court observes that it has already concluded that the issue and circulation of the arrest warrant of 11 April 2000 by the Belgian authorities failed to respect the immunity of the incumbent Minister for Foreign Affairs of the Congo and. more particularly, infringed the immunity from criminal jurisdiction and the inviolability then enjoyed by Mr. Yerodia under international law. Those acts engaged Belgium's international responsibility. The Court considers that the findings so reached by it constitute a form of satisfaction which will make good the moral injury complained of by the Congo.

However, the Court goes on to observe that, as the Permanent Court of International Justice stated in its judgment of 13 September 1928 in the case concerning the *Factory at Chorzów*:

> "[t]he essential principle contained in the actual notion of an illegal act—a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals—is that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed" (*P.C.I.J., Series A, No. 17*, p. 47).

The Court finds that, in the present case, "the situation which would, in all probability, have existed if [the illegal act] had not been committed" cannot be reestablished merely by a finding by the Court that the arrest warrant was unlawful under international law. The warrant is still extant, and remains unlawful, notwithstanding the fact that Mr. Yerodia has ceased to be Minister for Foreign Affairs. The

Court accordingly considers that Belgium must, by means of its own choosing, cancel the warrant in question and so inform the authorities to whom it was circulated.

The Court sees no need for any further remedy: in particular, the Court points out that it cannot, in a judgment ruling on a dispute between the Congo and Belgium, indicate what that judgment's implications might be for third States, and the Court finds that it cannot therefore accept the Congo's submissions on this point.

*

Operative paragraph (para. 78):

"For these reasons,

The Court,

(1) (A) By fifteen votes to one,

Rejects the objections of the Kingdom of Belgium relating to jurisdiction, mootness and admissibility;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal; *Judges ad hoc* Bula-Bula, Van den Wyngaert;

AGAINST: *Judge* Oda;

(B) By fifteen votes to one.

Finds that it has jurisdiction to entertain the Application filed by the Democratic Republic of the Congo on 17 October 2000;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal; *Judges ad hoc* Bula-Bula, Van den Wyngaert;

AGAINST: *Judge* Oda;

(C) By fifteen votes to one,

Finds that the Application of the Democratic Republic of the Congo is not without object and that accordingly the case is not moot;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal; *Judges ad hoc* Bula-Bula, Van den Wyngaert;

AGAINST: *Judge* Oda;

(D) By fifteen votes to one,

Finds that the Application of the Democratic Republic of the Congo is admissible;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal; *Judges ad hoc* Bula-Bula, Van den Wyngaert;

AGAINST: *Judge* Oda;

(2) By thirteen votes to three,

Finds that the issue against Mr. Abdulaye Yerodia Ndombasi of the arrest warrant of 11 April 2000, and its international circulation, constituted violations of a legal obligation of the Kingdom of Belgium towards the Democratic Republic of the Congo, in that they failed to respect the immunity from criminal jurisdiction and the inviolability which the incumbent Minister for Foreign Affairs of the Democratic Republic of the Congo enjoyed under international law;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Buergenthal; *Judge ad hoc* Bula-Bula;

AGAINST: *Judges* Oda, Al-Khasawneh; *Judge ad hoc* Van den Wyngaert;

(3) By ten votes to six,

Finds that the Kingdom of Belgium must, by means of its own choosing, cancel the arrest warrant of 11 April 2000 and so inform the authorities to whom that warrant was circulated;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Parra-Aranguren, Rezek; *Judge ad hoc* Bula-Bula;

AGAINST: *Judges* Oda, Higgins, Kooijmans, Al-Khasawneh, Buergenthal; *Judge ad hoc* Van den Wyngaert."

*

President Guillaume appended a separate opinion to the Judgment of the Court; Judge Oda a dissenting opinion; Judge Ranjeva a declaration; Judge Koroma a separate opinion; Judges Higgins, Kooijmans and Buergenthal a joint separate opinion; Judge Rezek a separate opinion; Judge Al-Khasawneh a dissenting opinion; Judge ad hoc Bula-Bula a separate opinion; and Judge ad hoc Van den Wyngaert a dissenting opinion.

22. *Application for Revision of the Judgment of 11 July 1996 in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia), Preliminary Objections (Yugoslavia* v. *Bosnia and Herzegovina)*

On 24 April 2001, the Federal Republic of Yugoslavia filed in the Registry of the Court an Application for revision of the judgment delivered by the Court on 11 July 1996 in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia), Preliminary Objections*.

In that judgment, the Court rejected the preliminary objections raised by Yugoslavia and found that it had jurisdiction to deal with the case on the basis of article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, dismissing the additional bases of jurisdiction invoked by Bosnia and Herzegovina. The Court further found that the Application filed by Bosnia and Herzegovina was admissible.

Yugoslavia contends that a revision of the judgment is necessary now that it has become clear that, before 1 November 2000 (the date on which it was admitted as a new Member of the United Nations), Yugoslavia did not continue the interna-

tional legal and political personality of the Socialist Federal Republic of Yugoslavia, was not a Member of the United Nations, was not a State party to the Statute of the Court, and was not a State party to the Genocide Convention (which is only open to United Nations Member States or to non-member States to which an invitation to sign or accede has been addressed by the General Assembly).

Yugoslavia bases its Application for revision on Article 61 of the Statute of the Court, which provides in its first paragraph that:

> "an application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence."

Yugoslavia states that its admission to the United Nations as a new Member on 1 November 2000 constitutes "a new fact", which was "obviously unknown to both the Court and to [Yugoslavia] at the time of the 1996 judgment". It adds that:

> "since membership in the United Nations, combined with the status of a party to the Statute [of the Court] and to the Genocide Convention represent the only basis on which jurisdiction over the Federal Republic of Yugoslavia was assumed, and could be assumed, the disappearance of this assumption . . . [is] clearly of such a nature [as] to be a decisive factor."

Yugoslavia asserts that no alternative basis for the Court's jurisdiction existed or could have existed in the case. Yugoslavia further notes that, while on 8 March 2001 it submitted to the United Nations Secretary-General a notification seeking accession to the Genocide Convention, that instrument includes a reservation to article IX. Moreover, according to Yugoslavia,

> "accession has no retroactive effect. Even if it had [retroactive effect] this cannot possibly encompass the compromissory clause in article IX of the Genocide Convention, because the Federal Republic of Yugoslavia never accepted article IX and the Federal Republic of Yugoslavia's accession [to the Convention] did not encompass article IX."

For all these reasons, Yugoslavia requested the Court to declare that "there is a new fact of such a character as to lay the case open to revision under Article 61 of the Statute of the Court". It further asked the Court to "suspend proceedings regarding the merits of the Case until a decision on this Application is rendered".

Copies of the pleadings have been made available to the Government of Croatia, at its request.

On 3 December 2001, within the time limit fixed by the President of the Court at a meeting with the representatives of the Parties, Bosnia and Herzegovina filed written observations regarding the admissibility of Yugoslavia's Application, in accordance with Article 99, paragraph 2, of the Rules of Court.

23. *Certain Property (Liechtenstein* v. *Germany)*

On 1 June 2001, Liechtenstein filed in the Registry of the Court an Application instituting proceedings against Germany concerning

> "decisions of Germany . . . to treat certain property of Liechtenstein nationals as German assets . . . seized for the purposes of reparation or restitution as a consequence of World War II . . . without ensuring any compensation."

In the Application, Liechtenstein alleges the following facts. In 1945, Czechoslovakia—during the Second World War an allied country and a belligerent against Germany—through a series of decrees (the Beneš decrees) seized German and Hungarian property located on its territory. Czechoslovakia applied those decrees not only to German and Hungarian nationals, but also to other persons allegedly of German or Hungarian origin or ethnicity. For this purpose it treated the nationals of Liechtenstein as German nationals. The property of those Liechtenstein nationals seized under these decrees (the "Liechtenstein property") has never been returned to its owners nor has compensation been offered or paid. The application of the Beneš decrees to the Liechtenstein property remained an unresolved issue between Liechtenstein and Czechoslovakia until the dissolution of the latter, and it continues to be an unresolved issue as between Liechtenstein and the Czech Republic, on whose territory the vast majority of Liechtenstein property is located.

Liechtenstein further refers to the Convention on the Settlement of Matters arising out of the War and the Occupation, signed at Bonn on 26 May 1952 ("the Settlement Convention"). The Application states that by article 3, paragraph 1, of that Convention, Germany agreed, inter alia, that it would "in the future raise no objections against the measures which have been or will be, carried out with regard to German external assets or other property, seized for the purpose of reparation or restitution or as a result of the state of war". The Application alleges that the Settlement Convention was only concerned with German property so called, i.e., property of the German State or of its nationals, and that under international law, having regard to Liechtenstein's neutrality and the absence of whatsoever links between Liechtenstein and the conduct of the war by Germany, any Liechtenstein property that may have been affected by measures of an Allied Power could not be considered as "seized for the purpose of reparation or restitution or as a result of the state of war". Liechtenstein maintains that subsequent to the conclusion of the Settlement Convention, it was accordingly understood between Germany and itself that the Liechtenstein property did not fall within the regime of the Convention, and that, as a corollary, Germany maintained the position that property falling outside the scope of the Convention was unlawfully seized, and that the German courts were not barred from considering claims affecting such property.

Liechtenstein alleges that in 1998 the position of the Federal Republic of Germany changed, however, as a result of a decision of the Federal Constitutional Court of 28 January 1998. The decision concerned a painting which was among the Liechtenstein property seized in 1945, and which was in possession of the Historic Monument Offices in Brno, Czech Republic, a State entity of the Czech Republic. It was brought to Germany for the purposes of an exhibition, and thus came into possession of the Municipality of Cologne. At the request of the Reigning Prince, Prince Hans Adam II, acting in his private capacity, the painting was attached pending determination of the claim by the German courts. Eventually, however, the claim failed. The Federal Constitutional Court held that the German courts were required by article 3 of the Settlement Convention to treat the painting as German property in the sense of the Convention. Accordingly the painting was released and returned to the Czech Republic. The Application of Liechtenstein claims that the decision of the Federal Constitutional Court is unappealable, and is attributable to Germany as a matter of international law and is binding upon Germany.

Liechtenstein states that it protested to Germany that the latter was treating as German assets which belonged to nationals of Liechtenstein, to their detriment and the detriment of Liechtenstein itself. It states further that Germany rejected this pro-

test and that in subsequent consultations it became clear that Germany now adheres to the position that Liechtenstein assets as a whole were "seized for the purpose of reparation or restitution or as a result of the state of war" within the meaning of the Convention, even though the decision of the Federal Constitutional Court only concerned a single item. According to the Application of Liechtenstein, in taking this position Germany remains faithful to the decision of its highest court in the matter; but at the same time it ignores and undermines the rights of Liechtenstein and its nationals in respect of the Liechtenstein property. Liechtenstein claims that:

> "(*a*) by its conduct with respect to the Liechtenstein property, in and since 1998, Germany failed to respect the rights of Liechtenstein with respect to that property;
>
> (*b*) by its failure to make compensation for losses suffered by Liechtenstein and/or its nationals. Germany is in breach of the rules of international law."

Liechtenstein accordingly requests the Court "to adjudge and declare that Germany has incurred international legal responsibility and is bound to make appropriate reparation to Liechtenstein for the damage and prejudice suffered". Liechtenstein further requests "that the nature and amount of such reparation should, in the absence of agreement between the Parties, be assessed and determined by the Court, if necessary, in a separate phase of the proceedings".

As a basis for the Court's jurisdiction, Liechtenstein invokes article 1 of the European Convention for the Peaceful Settlement of Disputes, signed at Strasbourg on 29 April 1957.

By an Order of 28 June 2001, the Court, taking account of the agreement of the Parties, fixed 28 March 2002 as the time limit for the filing of a Memorial by Liechtenstein and 27 December 2002 as the time limit for the filing of a Counter-Memorial by Germany.

24. *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*

On 6 December 2001, Nicaragua instituted proceedings against Colombia in respect of a dispute concerning "a group of related legal issues subsisting" between the two States "concerning title to territory and maritime delimitation".

In its Application, Nicaragua inter alia claimed that:

> "the islands and keys of San Andrés and Providencia pertain to those groups of islands and keys that in 1821 [date of independence from Spain] became part of the newly formed Federation of Central American States and, after the dissolution of the Federation in 1838, . . . came to be part of the sovereign territory of Nicaragua".

It considered in that connection that the Barcenas-Esguerra Treaty of 24 March 1928 "lacks legal validity and consequently cannot provide a basis of Colombian title with respect to the Archipelago of San Andrés". Nicaragua added that, in any case, that treaty was "not . . . a treaty of delimitation".

Nicaragua recalled that its Constitution as early as 1948 affirmed that the national territory included the continental platforms on both the Atlantic and Pacific oceans and that by decrees of 1958 it had made it clear that the resources of the continental shelf belonged to it. In 1965, it moreover declared a national fishing zone of 200 nautical miles. Nicaragua went on to state that, by claiming sovereignty over the islands of Providencia and San Andrés and keys which, according to it, "have a total of land area of 44 square kilometres and an overall

coastal length that is under 20 kilometres, Colombia claims dominion over more than 50,000 square kilometres of maritime space that appertain to Nicaragua", which represented "more than half" the maritime spaces of Nicaragua in the Caribbean Sea. It contended that the current situation was "seriously imperilling the livelihood of the Nicaraguan people, particularly those of the Caribbean coast that traditionally have had a great dependence on natural resources of the sea" and observed that the Colombian navy had been intercepting and capturing a number of fishing vessels "in areas as close as 70 miles off the Nicaraguan coast", east of the 82 meridian. Nicaragua finally maintained that diplomatic negotiations had failed.

Nicaragua therefore requested the Court to:

> "adjudge and declare:
>
> "*First*, that . . . Nicaragua has sovereignty over the islands of Providencia, San Andrés and Santa Catalina and all the appurtenant islands and keys, and also over the Roncador, Serrana, Serranilla and Quitasueño keys (in so far as they are capable of appropriation);
>
> "*Second*, in the light of the determinations concerning title requested above, the Court is asked further to determine the course of the single maritime boundary between the areas of continental shelf and exclusive economic zone appertaining respectively to Nicaragua and Colombia, in accordance with equitable principles and relevant circumstances recognized by general international law as applicable to such a delimitation of a single maritime boundary."

Nicaragua further indicated that "it reserves the right to claim compensation for elements of unjust enrichment consequent upon Colombian possession of the Islands of San Andrés and Providencia as well as the keys and maritime spaces up to the 82 meridian, in the absence of lawful title", as well as "the right to claim compensation for interference with fishing vessels of Nicaraguan nationality or vessels licensed by Nicaragua".

As a basis for the Court's jurisdiction, Nicaragua invoked article XXXI of the American Treaty on Pacific Settlement (officially known as the "Pact of Bogotá"), signed on 30 April 1948, to which both Nicaragua and Colombia are parties. Nicaragua also refers to the declarations under Article 36 of the Statute of the Court, by which Nicaragua and Colombia accepted the compulsory jurisdiction of the Court, in 1929 and 1937 respectively.

* * *

Consideration by the General Assembly

In its decision 56/407, adopted on 30 October 2001 without reference to a Main Committee, the General Assembly took note of the report of the International Court of Justice.[108]

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6. INTERNATIONAL LAW COMMISSION[109]

Fifty-third session of the Commission[110]

The International Law Commission (ILC) held the first part of its fifty-third session from 23 April to 1 June and the second part from 2 July to 10 August 2001 at its seat at the United Nations Office at Geneva.

Regarding the topic of State responsibility, the Commission had before it comments and observations received from Governments on the draft articles provisionally adopted by the Drafting Committee at its fifty-second session[111] and the fourth report of the Special Rapporteur.[112] The Commission decided to change the name of the topic to "Responsibility of States for internationally wrongful acts" in order to better distinguish the topic from the responsibility of the State under internal law. The Commission further decided to recommend to the General Assembly that it take note of the draft articles in a resolution, and that it annex the draft articles to the resolution. The Commission recommended that the General Assembly consider, at a later stage, the possibility of convening an international conference of plenipotentiaries to examine the draft articles with a view to concluding a convention on the topic.

Concerning the topic "International liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary harm from hazardous activities)", the Commission considered the report of the Drafting Committee[113] and subsequently, adopted the final text of a draft preamble and a set of 19 draft articles on prevention of transboundary harm from hazardous activities, as well as the commentaries to the draft articles. Furthermore, the Commission submitted the draft preamble and draft articles to the General Assembly and recommended the elaboration of a convention by the Assembly on the basis of the draft articles.

For the topic "Reservations to treaties", the Commission initially had before it the second part of the fifth report[114] relating to questions of procedure regarding reservations and interpretative declarations, as well as the sixth report of the Special Rapporteur[115] relating to the modalities of formulating reservations and interpretative declarations and to publicity of reservations and interpretative declarations. The Commission considered both reports.[116]

Regarding the topic "Diplomatic protection", the Commission had before it the remainder of the Special Rapporteur's first report[117] as well as his second report.[118] The Commission decided to refer draft articles 9, 10 and 11 to the Drafting Committee, and to establish an open-ended informal consultation on article 9. And concerning the topic "Unilateral acts of States", the Commission had before it the fourth report of the Special Rapporteur,[119] which the Commission considered at the session. Furthermore, an open-ended working group was established, which subsequently recommended that the Commission request the United Nations Secretariat to circulate a questionnaire to Governments inviting them to provide further information regarding their practice of formulating and interpreting unilateral acts.

Consideration by the General Assembly

The General Assembly, on 12 December 2001, on the recommendation of the Sixth Committee, adopted without a vote resolution 56/78, entitled "Convention on jurisdictional immunities of States and their property", in which the Assembly decided that the Ad Hoc Committee on Jurisdictional Immunities of States and Their Property should meet from 4 to 15 February 2002. On the same date, the Assembly adopted resolution 56/82 entitled, "Report of the International Law Commission on the work of its fifty-third session", in which the Assembly took note of the report of ILC and requested the Commission, taking into account the comments and observations of Governments, whether in writing or expressed orally in debates in the General Assembly, to continue its work on the topics in its current programme. The Assembly also adopted resolution 56/83, of the same date, in which it welcomed the conclusion of the work of ILC on responsibility of States for internationally wrongful acts and its adoption of the draft articles and a detailed commentary on

the subject. The Assembly further commended the draft articles to the attention of Governments without prejudice to the question of their future adoption or other appropriate action.

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7. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW[120]

The United Nations Commission on International Trade Law (UNCITRAL) held its thirty-fourth session in Vienna from 25 June to 13 July 2001.

During the session, UNCITRAL completed its work on the draft Convention on Assignment of Receivables in International Trade and recommended it to the General Assembly for consideration at its fifty-sixth session.

Also during the session, UNCITRAL completed its work on the draft UNCITRAL Model Law on Electronic Signatures, adopting the Model Law and transmitting the text, together with the Guide to Enactment of the Model Law, to Governments and other interested parties. The Commission also recommended that all States give favourable consideration to the newly adopted Model Law, together with the UNCITRAL Model Law on Electronic Commerce adopted in 1996 and complemented in 1998, when they enacted or revised their laws, in view of the need for uniformity of the law applicable to alternatives to paper-based forms of communication, storage and authentication of information.

Concerning the topic of insolvency law, the Commission took note with satisfaction of the report and commended the work accomplished so far, in particular the holding on the Global Insolvency Colloquium (Vienna, December 2000)[121] and the efforts of coordination with the work carried out by other international organizations in the area of insolvency law. The Commission discussed the recommendations of the Colloquium, in particular with respect to the form that future work might take and interpretation of the mandate given to the Working Group by the Commission at its thirty-third session. The Commission confirmed that the mandate given to the Working Group should be widely interpreted to ensure an appropriately flexible work product, which should take the form of a legislative guide.

Regarding the topic of settlement of commercial disputes, the Commission took note of the reports of the Working Group on Arbitration on the work of its thirty-third and thirty-fourth sessions.[122] The Commission commended the Working Group for the progress accomplished so far regarding the three main issues under discussion on the topic, namely, the requirement of the written form for the arbitration agreement, the issues of interim measures of protection and the preparation of a model law on conciliation.

The Commission also discussed the topic of transport law at the current session, and had before it the report of the Secretary-General.[123] After discussion, the Commission decided to establish a working group to consider issues as outlined in the report on possible future work, including issues of liability. The Commission also decided that the considerations in the working group should initially cover port-to-port transport operations; however, the working group would be free to study the desirability and feasibility of dealing also with door-to-door transport operations or certain aspects of those operations, and, depending on the results of those studies, recommend to the Commission an appropriate extension of the work group's mandate.

During the thirty-fourth session, the Commission established a working group with the mandate to develop an efficient legal regime for security rights in goods involved in a commercial activity, including inventory, to identify the issues to be addressed, such as the form of the instrument, the exact scope of the assets that can serve as collateral, the perfection of security, the degree of formalities to be complied with, the need for an efficient and well-balanced enforcement regime, the scope of the debt that may be secured, means of publicizing the existence of security rights, limitations, if any, on the creditors entitled to the security right, the effects of bankruptcy on the enforcement of security right and the certainty and predictability of the creditor's priority over competing interests.

The Commission also established a working group entrusted with the task of drafting core model legislative provisions in the field of privately financed infrastructure projects.

During the session, the Commission noted with appreciation the ongoing work under the system that had been established for the collection and dissemination of case law on UNCITRAL texts (CLOUT), and further noted that CLOUT was a most important means of promoting the uniform interpretation and application of UNCITRAL texts by enabling interested persons, such as judges, arbitrators, lawyers or parties to commercial transactions to take into account decisions and awards of other jurisdictions when rendering their own judgements or opinions or adjusting their actions to the prevailing interpretation of those texts.

Also during the session, on the basis of a note by the Secretariat,[124] the Commission considered the status of the conventions and model laws emanating from its work, as well as the status of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). These legal instruments include:

1974 Convention on the Limitation Period in the International Sale of Goods, as amended by the 1980 Protocol: 17 States parties

[Unamended] 1974 Convention on the Limitation Period in the International Sale of Goods: 24 States parties

1978 United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules): 28 States parties

1980 United Nations Convention on Contracts for the International Sale of Goods: 59 States parties

1988 United Nations Convention on International Bills of Exchange and International Promissory Notes: not yet in force

1991 United Nations Convention on the Liability of Operators of Transport Terminals in International Trade: not yet in force

1995 United Nations Convention on Independent Guarantees and Stand-by Letters of Credit: 5 States parties

1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards: 126 States parties

1985 UNCITRAL Model Law on International Commercial Arbitration: Belarus, Greece, Madagascar and Republic of Korea have enacted legislation based on the Model Law

1992 UNCITRAL Model Law on International Credit Transfers

1994 UNCITRAL Model Law on Procurement of Goods, Construction and Services

1996 UNCITRAL Model Law on Electronic Commerce: Ireland, Philippines, Slovenia and States of Jersey (Crown Dependency of the United Kingdom of Great Britain and Northern Ireland) have enacted legislation based on the Model Law

1997 UNCITRAL Model Law on Cross-Border Insolvency: South Africa has enacted legislation based on the Model Law

Consideration by the General Assembly

At its fifty-sixth session, the General Assembly, on the recommendations of the Sixth Committee, adopted several resolutions and a decision on international trade law on 12 December 2001. By its resolution 56/79, adopted without a vote, the Assembly took note with appreciation of the report of the United Nations Commission on International Trade Law and took note of the progress made in the work of the Commission on arbitration and insolvency law and of its decision to commence work on electronic contracting, privately financed infrastructure projects, security interests and transport law. The Assembly also expressed its appreciation to the secretariat of the Commission for the publication and distribution of the *Legislative Guide on Privately Financed Infrastructure Projects*.[125]

In its resolution 56/80, the General Assembly expressed its appreciation to UNCITRAL for completing and adopting the Model Law on Electronic Signatures, which was contained in the annex to the resolution, and reads as follows:

Model Law on Electronic Signatures of the United Nations Commission on International Trade Law

Article 1

SPHERE OF APPLICATION

This Law applies where electronic signatures are used in the context[a] of commercial[b] activities. It does not override any rule of law intended for the protection of consumers.

Article 2

DEFINITIONS

For the purposes of this Law:

(*a*) "Electronic signature" means data in electronic form in, affixed to or logically associated with, a data message, which may be used to identify the signatory in relation to the data message and to indicate the signatory's approval of the information contained in the data message;

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[a] The Commission suggests the following text for States that might wish to extend the applicability of this Law:

"This Law applies where electronic signatures are used, except in the following situations: [. . .]."

[b] The term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking, insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

(*b*) "Certificate" means a data message or other record confirming the link between a signatory and signature creation data;

(*c*) "Data message" means information generated, sent, received or stored by electronic, optical or similar means including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy;

(*d*) "Signatory" means a person that holds signature creation data and acts either on its own behalf or on behalf of the person it represents;

(*e*) "Certification service provider" means a person that issues certificates and may provide other services related to electronic signatures;

(*f*) "Relying party" means a person that may act on the basis of a certificate or an electronic signature.

Article 3

EQUAL TREATMENT OF SIGNATURE TECHNOLOGIES

Nothing in this Law, except article 5, shall be applied so as to exclude, restrict or deprive of legal effect any method of creating an electronic signature that satisfies the requirements referred to in article 6, paragraph 1, or otherwise meets the requirements of applicable law.

Article 4

INTERPRETATION

1. In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

2. Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

Article 5

VARIATION BY AGREEMENT

The provisions of this Law may be derogated from or their effect may be varied by agreement, unless that agreement would not be valid or effective under applicable law.

Article 6

COMPLIANCE WITH A REQUIREMENT FOR A SIGNATURE

1. Where the law requires a signature of a person, that requirement is met in relation to a data message if an electronic signature is used that is as reliable as was appropriate for the purpose for which the data message was generated or communicated, in the light of all the circumstances, including any relevant agreement.

2. Paragraph 1 applies whether the requirement referred to therein is in the form of an obligation or whether the law simply provides consequences for the absence of a signature.

3. An electronic signature is considered to be reliable for the purpose of satisfying the requirement referred to in paragraph 1 if:

(*a*) The signature creation data are, within the context in which they are used, linked to the signatory and to no other person;

(*b*) The signature creation data were, at the time of signing, under the control of the signatory and of no other person;

(*c*) Any alteration to the electronic signature, made after the time of signing, is detectable; and

(*d*) Where a purpose of the legal requirement for a signature is to provide assurance as to the integrity of the information to which it relates, any alteration made to that information after the time of signing is detectable.

4. Paragraph 3 does not limit the ability of any person:

(*a*) To establish in any other way, for the purpose of satisfying the requirement referred to in paragraph 1, the reliability of an electronic signature; or

(*b*) To adduce evidence of the non-reliability of an electronic signature.

5. The provisions of this article do not apply to the following:

[. . .].

Article 7

SATISFACTION OF ARTICLE 6

1. [*Any person organ or authority, whether public or private, specified by the enacting State as competent*] may determine which electronic signatures satisfy the provisions of article 6 of this Law.

2. Any determination made under paragraph 1 shall be consistent with recognized international standards.

3. Nothing in this article affects the operation of the rules of private international law.

Article 8

CONDUCT OF THE SIGNATORY

1. Where signature creation data can be used to create a signature that has legal effect, each signatory shall:

(*a*) Exercise reasonable care to avoid unauthorized use of its signature creation data;

(*b*) Without undue delay, utilize means made available by the certification service provider pursuant to article 9 of this Law or otherwise use reasonable efforts, to notify any person that may reasonably be expected by the signatory to rely on or to provide services in support of the electronic signature if:

(i) The signatory knows that the signature creation data have been compromised; or

(ii) The circumstances known to the signatory give rise to a substantial risk that the signature creation data may have been compromised;

(*c*) Where a certificate is used to support the electronic signature, exercise reasonable care to ensure the accuracy and completeness of all material representations made by the signatory that are relevant to the certificate throughout its life cycle or that are to be included in the certificate.

2. A signatory shall bear the legal consequences of its failure to satisfy the requirements of paragraph 1.

Article 9

CONDUCT OF THE CERTIFICATION SERVICE PROVIDER

1. Where a certification service provider provides services to support an electronic signature that may be used for legal effect as a signature, that certification service provider shall:

(*a*) Act in accordance with representations made by it with respect to its policies and practices;

(*b*) Exercise reasonable care to ensure the accuracy and completeness of all material representations made by it that are relevant to the certificate throughout its life cycle or that are included in the certificate;

(*c*) Provide reasonably accessible means that enable a relying party to ascertain from the certificate:

(i) The identity of the certification service provider;

(ii) That the signatory that is identified in the certificate had control of the signature creation data at the time when the certificate was issued;

(iii) That signature creation data were valid at or before the time when the certificate was issued;

(*d*) Provide reasonably accessible means that enable a relying party to ascertain, where relevant, from the certificate or otherwise:

(i) The method used to identify the signatory;

(ii) Any limitation on the purpose or value for which the signature creation data or the certificate may be used;

(iii) That the signature creation data are valid and have not been compromised;

(iv) Any limitation on the scope or extent of liability stipulated by the certification service provider;

(v) Whether means exist for the signatory to give notice pursuant to article 8, paragraph 1 (*b*), of this Law;

(vi) Whether a timely revocation service is offered;

(*e*) Where services under subparagraph (*d*) (v) are offered, provide a means for a signatory to give notice pursuant to article 8, paragraph 1 (*b*), of this Law and, where services under subparagraph (*d*) (vi) are offered, ensure the availability of a timely revocation service;

(*f*) Utilize trustworthy systems, procedures and human resources in performing its services.

2. A certification service provider shall bear the legal consequences of its failure to satisfy the requirements of paragraph 1.

Article 10

TRUSTWORTHINESS

For the purposes of article 9, paragraph 1 (*f*), of this Law in determining whether, or to what extent, any systems, procedures and human resources utilized by a certification service provider are trustworthy, regard may be had to the following factors:

(*a*) Financial and human resources, including existence of assets;

(*b*) Quality of hardware and software systems;

(*c*) Procedures for processing of certificates and applications for certificates and retention of records;

(*d*) Availability of information to signatories identified in certificates and to potential relying parties;

(*e*) Regularity and extent of audit by an independent body;

(*f*) The existence of a declaration by the State, an accreditation body or the certification service provider regarding compliance with or existence of the foregoing; or

(*g*) Any other relevant factor.

Article 11

CONDUCT OF THE RELYING PARTY

A relying party shall bear the legal consequences of its failure:

(*a*) To take reasonable steps to verify the reliability of an electronic signature; or

(*b*) Where an electronic signature is supported by a certificate, to take reasonable steps:

(i) To verify the validity, suspension or revocation of the certificate; and

(ii) To observe any limitation with respect to the certificate.

Article 12

RECOGNITION OF FOREIGN CERTIFICATES AND ELECTRONIC SIGNATURES

1. In determining whether, or to what extent, a certificate or an electronic signature is legally effective, no regard shall be had:

(*a*) To the geographic location where the certificate is issued or the electronic signature created or used; or

(*b*) To the geographic location of the place of business of the issuer or signatory.

2. A certificate issued outside [*the enacting State*] shall have the same legal effect in [*the enacting State*] as a certificate issued in [*the enacting State*] if it offers a substantially equivalent level of reliability.

3. An electronic signature created or used outside [*the enacting State*] shall have the same legal effect in [*the enacting State*] as an electronic signature created or used in [*the enacting State*] if it offers a substantially equivalent level of reliability.

4. In determining whether a certificate or an electronic signature offers a substantially equivalent level of reliability for the purposes of paragraph 2 or 3, regard shall be had to recognized international standards and to any other relevant factors.

5. Where, notwithstanding paragraphs 2, 3 and 4, parties agree, as between themselves, to the use of certain types of electronic signatures or certificates, that agreement shall be recognized as sufficient for the purposes of cross-border recognition, unless that agreement would not be valid or effective under applicable law.

With its resolution 56/81, the Assembly adopted and opened for signature or accession the United Nations Convention on the Assignment of Receivables in International Trade.[126] The General Assembly also adopted decision 56/422, by which it decided to defer further consideration of and a decision on the enlargement of the membership of the United Nations Commission on International Trade Law until its fifty-seventh session.

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

In addition to the matters concerning the International Law Commission and international trade law, culminating in the resolutions discussed in the above sections, the Sixth Committee also considered additional items and submitted its recommendations thereon to the General Assembly at its fifty-sixth session.

On 12 December 2001, the General Assembly adopted without a vote resolution 56/77, entitled "United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law", in which it approved the guidelines and recommendations contained in section III of the report of the Secretary-General[127] and adopted by the Advisory Committee on the United Nations Programme of Assistance.

In its resolution 56/84 of the same date, the General assembly endorsed the recommendations and conclusions of the Committee on Relations with the Host Country contained in paragraph 37 of its report,[128] and expressed its appreciation for the efforts made by the host country, the United States of America, and hoped that the issues raised at the meetings of the Committee would continue to be resolved in a spirit of cooperation and in accordance with international law.

In its resolution 56/85 of the same date, entitled "Establishment of the International Criminal Court", the General Assembly reiterated the historic significance of the adoption of the Rome Statute of the International Criminal Court,[129] and re-

quested the Secretary-General to reconvene the Preparatory Commission for the International Criminal Court, in accordance with resolution F adopted by the Conference, from 8 to 19 April and from 1 to 12 July 2002, to continue to carry out the mandate of that resolution and, in that connection, to discuss the ways to enhance the effectiveness and acceptance of the Court.

In its resolution 56/86, the General Assembly took note of the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization,[130] and decided that the Special Committee shall hold its next session from 18 to 28 March 2002. And in its resolution 56/87, entitled "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 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 were or might 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 welcomed the measures taken by the Security Council since the adoption of General Assembly resolution 50/51, most recently the note by the President of the Security Council of 17 April 2000,[131] whereby the members of the Security Council had decided to establish an informal working group of the Council to develop general recommendations on how to improve the effectiveness of United Nations sanctions, and welcomed the report of the Secretary-General containing a summary of the deliberations and main findings 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.[132]

On the topic of international terrorism, the General Assembly adopted resolution 56/88, wherein, having examined the report of the Secretary-General,[133] the report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996[134] and the report of the Working Group of the Sixth Committee established pursuant to General Assembly resolution 55/158 of 12 December 2000,[135] urged all States that had not yet done so to consider, as a matter of priority, and in accordance with Security Council resolution 1373 (2001), becoming parties to relevant conventions and protocols as referred to in paragraph 6 of General Assembly resolution 51/210, as well as the International Convention for the Suppression of Terrorist Bombings[136] and the International Convention for the Suppression of the Financing of Terrorism,[137] and called upon all States to enact, as appropriate, domestic legislation necessary to implement the provisions of those conventions and protocols, to ensure that the jurisdiction of their courts enabled them to bring to trial the perpetrators of terrorist acts, and to cooperate with and provide support and assistance to other States and relevant international and regional organizations to that end.

With regard to the item entitled "Scope of legal protection under the 1994 Convention on the Safety of United Nations and Associated Personnel",[138] the General Assembly adopted resolution 56/89, in which it expressed its appreciation to the

Secretary-General for his report[139] on the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel and took note of the recommendations contained therein. The Assembly also took note of the report of the Special Committee on Peacekeeping Operations with regard to the safety and security of United Nations and associated personnel and the scope of existing legal protection and its recommendations,[140] and recommended that the Secretary-General continue to seek the inclusion of relevant provisions of the Convention in the status-of-forces or status-of-mission agreements concluded by the United Nations.

In its resolution 56/93 of 12 December 2001, entitled "International Convention against the reproductive cloning of human beings", the General Assembly, bearing in mind Commission on Human Rights resolution 2001/71 of 25 April 2001, entitled "Human Rights and bioethics",[141] and noting the resolution on bioethics adopted by the General Conference of UNESCO on 2 November 2001,[142] decided to establish an Ad Hoc Committee, open to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency, for the purpose of considering the elaboration of an international convention against the reproductive cloning of human beings, and decided also that the Ad Hoc Committee should meet from 25 February to 1 March 2002 to consider the elaboration of a mandate for the negotiation of such an international convention.

The General Assembly also adopted several resolutions and decisions granting observer status to: International Development Law Institute (resolution 56/90); International Hydrographic Organization (resolution 56/91); Community of Sahelo-Saharan States (resolution 56/92); International Institute for Democracy and Electoral Assistance (decision 56/423); Partners in Population and Development (decision 56/424); and Inter-Parliamentary Union (decision 56/425).

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9. UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH

During 2001, UNITAR carried out its extensive training programmes, including those in preventive diplomacy, international law, international civil service and international affairs management.[143] Funds were received to support a programme on training peacekeepers on the special needs of women and children in conflict, as well as for the development of the programme on law and cyberspace. Also during the year, efforts were intensified to attract experts from developing countries and countries with economies in transition for the preparation of relevant training materials for the programmes and activities of the Institute.

At its fifty-sixth session, the General Assembly, on 21 December 2001, on the recommendation of the Second Committee, adopted without a vote resolution 56/208, in which it reaffirmed the importance of a coordinated, United Nations system-wide approach to research and training based on an effective coherent strategy and an effective division of labour among the relevant institutions and bodies.

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 89th session in Geneva from 5 to 21 June 2001, adopted the Safety and Heath in Agriculture Convention and Recommendation, 2001.[144]

2. The Committee on the Application of Standards of ILC held a special sitting concerning the application by Myanmar of the Forced Labour Convention, 1930 (No. 29), in application of the resolution adopted by the International Labour Conference at its 88th session (June 2000).[145]

3. The Committee of Experts on the Application of Conventions and Recommendations met in Geneva from 22 November to 7 December 2001 to adopt its report[146] to the 90th session of the International Labour Conference (2002).

4. Representations lodged under article 24 of the Constitution of the International Labour Organization alleging non-observance by Ecuador[147] and Chile[148] of the Discrimination (Employment and Occupation) Convention (No. 111), 1958; by Mexico of the Indigenous and Tribal Peoples Convention, 1989 (No. 169);[149] and by Guatemala of the Tripartite Consultation (International Labour Standards) Convention (No. 144), 1976,[150] were examined by the Governing Body of the International Labour Office.

5. The Governing Body of ILO considered and adopted the following reports of its Committee on Freedom of Association: the 324th report[151] (280th session, March 2001); the 325th report[152] (281st session, June 2001); and the 326th report[153] (282nd session, November 2001).

6. The Working Party on the Social Dimensions of Globalization, established by the Governing Body, held two meetings in 2001 during the 280th (March 2001)[154] and 282nd (November 2001)[155] sessions of the Governing Body.

7. 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 2001 during the 280th (March 2001)[156] and 282nd (November 2001)[157] sessions of the Governing Body.

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* The order of the organizations reflects the chronological order, from earlier to most recent, of the effective date the United Nations entered into a relationship with the Organization. All the organizations listed here are United Nations specialized agencies, except for IAEA and WTO, which are autonomous intergovernmental organizations that work in cooperation with the United Nations, and are listed last.

2. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

(*a*) Constitutional amendments

At its 31st session (15 October-3 November 2001) the General Conference of UNESCO adopted the following amendments to its Constitution:

(i) *Amendment to article VI, paragraph 2, of the Constitution*

"*The General Conference*,

"*Having examined* document 31 C/20 and taken note of the sixth report of the Legal Committee (31 C/76),

"*Decides* to replace the text in article VI, paragraph 2, of the Constitution by the following text:

"'The Director-General shall be nominated by the Executive Board and appointed by the General Conference for a period of *four* years, under such conditions as the Conference may approve. The Director-General may be appointed for a further period of *four* years but shall not be eligible for reappointment to a subsequent term. The Director-General shall be the Chief Administrative Officer of the Organization.'"

(ii) *Amendment to article II of the Constitution*

"*The General Conference*,

"*Having examined* document 31 C/45 and *taken note* of the tenth report of the Legal Committee (31 C/80),

"*Decides* to insert, in article II of the Constitution, after paragraph 6 of this article, the following text:

"'7. Each member State is entitled to appoint a Permanent Delegate to the Organization.

"'8. The Permanent Delegate of the member State shall present his credentials to the Director-General of the Organization, and shall officially assume his duties from the day of presentation of his credentials.'"

(*b*) International regulations

At its 31st session (15 October-3 November 2001) the General Conference of UNESCO adopted the following three standard-setting instruments:

—Convention concerning the Protection of the Underwater Cultural Heritage

—Revised Recommendation concerning Technical and Vocational Education

—Universal Declaration on Cultural Diversity

(*c*) Human rights

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

The Committee on Conventions and Recommendations met in private session at UNESCO headquarters from 22 to 24 May and from 27 to 29 September 2001 in

order to examine communications which had been transmitted to it in accordance with decision 104 EX/3.3 of the Executive Board.

At its May 2001 session, the Committee examined 30 communications, of which 7 were examined with a view to determining their admissibility or otherwise, 16 were examined as to their substance and 7 were examined for the first time. Four communications were declared inadmissible and five were struck from the list because they were considered as having been settled or did not, after examination of their merits, appear to warrant further action. The examination of the 21 was deferred. The Committee presented its report to the Executive Board at its 161st session.

At its September 2001 session, the Committee examined 22 communications, of which 5 were examined with a view to determining their admissibility, 16 were examined as to their substance and 1 new communication was submitted to the Committee. One communication was declared inadmissible and three were struck from the list because they were considered as having been settled or did not, after examination of their merits, appear to warrant further action. The examination of the 18 was deferred. The Committee presented its report to the Executive Board at its 162nd session.

(*d*) Copyright activities

In 2001, the activities of UNESCO in the field of copyright were mainly concentrated on:

(i) *Organization of statutory meetings*

- Organization of the 12th ordinary session of the Intergovernmental Committee of the Universal Copyright Convention (adopted under the aegis of UNESCO in 1952 and revised in 1971), 18-22 June 2001, at UNESCO headquarters. The Committee studied the following legal issues on the protection of copyright in the digital environment:
  - The role of service and access providers in digital transmission and their responsibility regarding copyright (document IGC(1971)/XII/4)
  - International experience in regard to procedures for settling conflicts relating to copyright in the digital environment (document IGC(1971)/XII/5)
  - Practical aspects of the exercise of the "droit de suite", including in the digital environment, and its effects on developments in the international art market and on the improvement of the protection of visual artists (document IGC(1971)/XII/6)
- Organization of the 18th ordinary session of the Intergovernmental Committee of the Rome Convention (27-28 June 2001) jointly with ILO and WIPO. The Committee had extensive discussions on the analysis of a "comparative study of various international instruments concerning neighbouring rights"
- Participation in international discussions on copyright and neighbouring rights problems, particularly conferences held by the International Organization of la Francophonie, the European Union (EU) and WIPO (Diplomatic Conference on the Protection of Audiovisual Performances, Standing Committee on Copyright and Related Rights, Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore)

(ii) *Legal assistance to member States*

- Elaboration of a first draft of Model Provisions for the Protection of Traditional and Popular Culture in the Pacific States, with extensive commentary, to assist the States in the formulation of their national laws and management of the rights in this matter
- Organization of workshops on copyright and neighbouring rights in the framework of festivals organized in Burundi and the Congo

(iii) *Collective administration of authors' rights*

- The French and English versions of a special Guide to the Collective Administration of Authors' Rights was widely distributed to the Governments and to the groups concerned, mainly in developing countries and countries in transition. The Russian version of the guide was published at the end of 2001 with the support of the EU TACIS programme for technical assistance to the independent States of the former Soviet Union and Mongolia

(iv) *Information for specialists and sensitizing the public*

- Publication of the electronic version of the UNESCO *Copyright Bulletin* (in English, French, and Spanish) and of the printed version (quarterly in Chinese and Russian), containing theoretical doctrines, articles, information on national laws (new laws, revisions, updating), UNESCO activities in the field (meetings reports, résumés of the actions undertaken, etc.), participation of the States in various conventions and new specialized books recently published throughout the world. During 2001, the *Copyright Bulletin* was mainly dedicated to the search for a solution to the copyright problems raised by digital technology and problems of access to information and knowledge in the digital environment
- Drafting of the updated supplement of the Manual on Copyright and Neighbouring Rights and translation of the first version into Arabic and Russian
- Training of qualified specialists to work in all infrastructures concerned with copyright (governmental bodies, judicial system, legal services, etc.) through the creation of specialized UNESCO Chairs (in Jordan, Algeria, China and Georgia). Improvement of the pedagogical capacities of six UNESCO Chairs and the network of UNESCO Chairs in Latin America—RAMLEDA—(eight Chairs) by assistance in the training of possible future UNESCO Chair holders, and support for the purchase of legal literature and subscriptions to foreign specialized journals

(v) *Global Alliance for Cultural Diversity*

- Launching by the 31st session of the General Conference of this new project to strengthen cultural industries in developing countries and countries in transition by means of new partnerships between public, private and civil society sectors. One important component is to promote respect for international copyright regulations and develop effective mechanisms to prevent piracy. The Global Alliance for Cultural Diversity contributes to the implementation of the UNESCO Universal Declaration on Cultural Diversity adopted by the General Conference at the same session

3. WORLD HEALTH ORGANIZATION

(*a*) Constitutional and legal developments

In 2001, no new member State joined the World Health Organization. Thus at the end of 2001, there were 191 member States and two Associate Members of WHO.

The amendments to articles 24 and 25 of the Constitution, adopted in 1998 by the fifty-first World Health Assembly to increase membership of the Executive Board from 32 to 34, had been accepted by 77 member States as of 31 December 2001. The amendment to article 7 of the Constitution, adopted in 1965 by the eighteenth World Health Assembly to suspend certain rights of member States practising racial discrimination, had been accepted by 75 of the member States as of December 2001. The amendment to article 74 of the Constitution, adopted in 1978 by the thirty-first World Health Assembly to establish Arabic as one of the authentic languages of the Constitution, had been accepted by 66 member States as of 31 December 2001. Acceptance by two thirds of member States is required for the amendments to enter into force.

On 25 October 2001, the International Labour Organization became the eighth co-sponsoring organization of the Joint United Nations Programme on HIV/AIDS (UNAIDS).

On 8 March 2001, WHO and the Government of the Federal Republic of Germany signed an Agreement for the establishment of the European Centre for Environment and Health in Bonn.

An Agreement based on the standard Basic Agreement for the Establishment of Technical Advisory Cooperation was concluded in 2001 with the Government of East Timor.

(*b*) Health legislation

(i) *Framework Convention on Tobacco Control*

By its resolution WHA52.18 of 24 May 1999, the fifty-second World Health Assembly established a Working Group and an Intergovernmental Negotiating Body to draft and negotiate a Framework Convention on Tobacco Control and possible related protocols. The fifty-third World Health Assembly, in May 2000, considered the second report of the Working Group, containing draft elements for a WHO Framework Convention on Tobacco Control, and formally launched the negotiation of the Convention by the Intergovernmental Negotiating Body. The main output of the first session of the Intergovernmental Negotiating Body, which was held from 16 to 21 October 2000, was that the Chairman would prepare a Chair's text of the Convention based on proposals made during the session.

During the second session of the Intergovernmental Negotiating Body (30 April-5 May 2001), the Chair's text was discussed. Three working groups divided up the work of reviewing the Chair's text and the Co-Chairs of the working groups developed a compendium of all the textual proposals on the Chair's text submitted by member States. The Co-Chairs' working papers in effect constituted a rolling text of the draft Framework Convention and provided a basis for initiating the third round of the negotiations. The fifty-fourth World Health Assembly, in May 2001,

considered the report of the second session of the Intergovernmental Negotiating Body and discussed progress towards the Framework Convention.

During the third session of the Intergovernmental Negotiating Body (22-28 November 2001), 168 out of 191 member States attended the session and significant progress was made in advancing the negotiations. Two Co-Chairs' texts of the second and third working groups were elaborated and accepted as a sound basis for resuming negotiations at the fourth session of the Intergovernmental Negotiating Body. Regarding the first working group, because of the complexity of the task assigned to it, there was not sufficient time to complete a final negotiable text and it was decided that the redrafting of the Co-Chairs' texts, based on the proposals submitted during the final meeting of the working group, would be completed between the third and the fourth sessions. Several delegations favoured an early protocol on illicit trade, and the United States of America offered to host an intergovernmental meeting on the topic.

WHO organized and supported a number of regional and subregional intersessional meetings related to the negotiation of the draft Framework Convention, such as the meeting of the African region in Johannesburg, South Africa, on 14 May 2001 or the consultation of Latin American countries in Brazil from 5 to 8 November 2001.

(ii) *International Code of Marketing of Breast-milk Substitutes*

By December 2001, 162 of the 191 member States (85 per cent) had reported to WHO on action to give effect to the principles and aims of the International Code of Marketing of Breast-milk Substitutes, adopted by the World Health Assembly in 1981. This includes adoption of new—or revision or strengthening of existing—legislation, regulations, national codes, guidelines for health workers and distributors, agreements with manufacturers, and monitoring and reporting mechanisms. In 2001, Cambodia, France and Nigeria provided information on new and revised action, while WHO responded to requests for related technical support from Australia, Cambodia, New Zealand and Pakistan. A comprehensive global strategy for infant and young child feeding was developed during the period 1999-2001 for discussion and expected endorsement by the WHO governing bodies in 2002.

(iii) *Technical cooperation*

During 2001, the headquarters and regional offices of WHO provided technical cooperation to a number of member States in connection with the development, assessment or review of various areas of health legislation. For example, the Regional Office for South-East Asia provided assistance of a legal nature to East Timor during the transitional year of 2001. The Regional Office for the Eastern Mediterranean has developed a draft version of a Manual entitled "The development of food legislation for countries of the Eastern Mediterranean", to be finalized in 2002. The Regional Office for the Western Pacific advised Cambodia in the establishment of the Cambodian Medical Council to regulate health professionals, and the Cook Islands, Kiribati, the Lao People's Democratic Republic and Vanuatu on the drafting of health legislation in the field of public health, drug policy, mental health, food and tobacco control.

4. WORLD BANK

Loan, Credit, Guarantee and related Agreements of the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA) that became effective during 2001 were notified and forwarded for registration to the United Nations Office of Legal Affairs, Treaty Section, by separate communications during 2001 and 2002.

During 2001, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention) was signed by one country (Saint Vincent and the Grenadines) and ratified by another (Bulgaria). At the end of the year, the number of signatory States was 149 and the number of Contracting States 134.

Disputes before the Centre

During 2001, arbitration proceedings under the ICSID Convention were instituted in 14 new cases. These cases were:

Impregilo, S.p.A. and Rizzani De Eccher S.p.A. v. *United Arab Emirates* (Case No. ARB/01/1)

Antoine Goetz and others v. *Republic of Burundi* (Case No. ARB/01/2)

Enron Corporation and Ponderosa Assets, L.P. v. *Argentine Republic* (Case No. ARB/01/3)

AES Summit Generation Limited v. *Republic of Hungary* (Case No. ARB/01/4)

Société d'Exploitation des Mines d'Or de Sadiola S.A. v. *Republic of Mali* (Case No. ARB/01/5)

AIG Capital Partners, Inc. and CJSC Tema Real Estate Company v. *Republic of Kazakhstan* (Case No. ARB/01/6)

MTD Equity Sdn. Bhd. and MTD Chile S.A. v. *Chile* (Case No. ARB/01/7)

CMS Gas Transmission Company v. *Argentine Republic* (Case No. ARB/01/8)

Booker plc v. *Cooperative Republic of Guyana* (Case No. ARB/01/9)

Repsol YPF Ecuador S.A. v. *Empresa Estatal Petróleos del Ecuador (Petroecuador)* (Case No. ARB/01/10)

Noble Ventures, Inc. v. *Republic of Romania* (Case No. ARB/01/11)

Azurix Corp. v. *Argentine Republic* (Case No. ARB/01/12)

SGS Société Générate de Surveillance S.A. v. *Islamic Republic of Pakistan* (Case No. ARB/01/13)

F-W Oil Interests, Inc. v. *Republic of Trinidad and Tobago* (Case No. ARB/01/14)

Five proceedings were discontinued. These were:

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

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

Empresa Nacional de Electricidad S.A. v. *Argentine Republic* (Case No. ARB/99/4)

Alimenta S.A. v. *Republic of The Gambia* (Case No. ARB/99/5)

Impregilo, S.p.A. and Rizzani De Eccher S.p.A. v. *United Arab Emirates* (Case No. ARB/01/1).

In addition, three proceedings were closed following the rendition of awards. These cases were:

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

Eduardo A. Olguín v. *Republic of Paraguay* (Case No. ARB/98/5)

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

Finally, two applications for annulment were registered in respect of awards rendered in two proceedings (*Compañía de Aguas del Aconquija S.A. and Vivendi Universal* v. *Argentine Republic* (Case No. ARB/97/3) and *Wena Hotels Limited* v. *Arab Republic of Egypt* (Case No. ARB/98/4)) as well as one application for supplementary decision and rectification proceeding (*Alex Genin and others* v. *Republic of Estonia* (Case No. ARB/99/2)).

As of 31 December 2001, 21 other cases were pending before the Centre. These were:

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

Victor Pey Casado and President Allende Foundation v. *Republic of Chile* (Case No. ARB/98/2)

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

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

Philippe Gruslin v. *Malaysia* (Case No. ARB/99/3)

Marvin Roy Feldman Karpa v. *United Mexican States* (Case No. ARB(AF)/99/1)

Mondev International Ltd. v. *United States of America* (Case No. ARB(AF)/99/2)

Middle East Cement Shipping and Handling Co. S.A. v. *Arab Republic of Egypt* (Case No. ARB/99/6)

Patrick Mitchell v. *Democratic Republic of the Congo* (Case No. ARB/99/7)

Zhinvali Development Ltd. v. *Republic of Georgia* (Case No. ARB/00/1)

Mihaly International Corporation v. *Democratic Socialist Republic of Sri Lanka* (Case No. ARB/00/2)

GRAD Associates, P.A. v. *Bolivarian Republic of Venezuela* (Case No. ARB/00/3)

Salini Costruttori S.p.A. and Italstrade S.p.A. v. *Kingdom of Morocco* (Case No. ARB/00/4)

Autopista Concesionada de Venezuela, C.A. v. *Bolivarian Republic of Venezuela* (Case No. ARB/00/5)

Consortium R.F.C.C. v. *Kingdom of Morocco* (Case No. ARB/00/6)

World Duty Free Company Limited v. *Republic of Kenya* (Case No. ARB/00/7)

Ridgepointe Overseas Developments, Ltd. v. *Democratic Republic of the Congo* (Case No. ARB/00/8)

ADF Group Inc. v. *United States of America* (Case No. ARB(AF)/00/1)

Técnicas Medioambientales Tecmed, S.A. v. *United Mexican States* (Case No. ARB(AF)/00/2)

Waste Management, Inc. v. *United Mexican States* (Case No. ARB(AF)/00/3)

Generation Ukraine Inc. v. *Ukraine* (Case No. ARB/00/9)

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5. INTERNATIONAL CIVIL AVIATION ORGANIZATION

(*a*) Membership

On 26 January, Andorra deposited with the Government of the United States its notification of adherence to the Convention on International Civil Aviation. The adherence took effect on 25 February, bringing the number of member States of the organization to 187.

(*b*) Conventions/Agreements

The ICAO Assembly at its 33rd session decided that ICAO should formally confirm the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (1986) and authorized the President of the Council to sign on behalf of ICAO an act of its formal confirmation. The act was deposited with the United Nations on 24 December.

A Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol was held in Cape Town, South Africa, from 29 October to 16 November. The Conference was attended by delegates from 68 Contracting States and observers from 14 international organizations. Following the conclusion of its deliberations, the Conference adopted the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment. Both the Convention and the Protocol were signed on site by 20 States. One other State signed during the week following the adoption of the instruments. The Conference further adopted, inter alia, a resolution approving a consolidated text of the Convention and the Protocol as a text of convenience.

(*c*) Other major legal developments

(i) *Work programme of the Legal Committee and legal meetings*

Pursuant to a decision of the Council at its 161st session, and confirmed at its 164th session and by the Assembly at its 33rd session, the general work programme of the Legal Committee is as follows:

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

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

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

(4) Consideration of the modernization of the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, signed at Rome on 7 October 1952;

(5) Review of the question of the ratification of international air law instruments;

(6) United Nations Convention on the Law of the Sea—implications, if any, for the application of the Convention on International Civil Aviation, its annexes and other international air law instruments.

Regarding item (1), the Secretariat Study Group on Legal Aspects of CNS/ATM systems held its 5th meeting in Montreal from 22 to 24 March. With respect to the legal framework for GNSS, the Group decided to explore the approach of a contractual framework. It also identified a number of common elements to be included in the framework, some of them relating to liability. The Group further indicated that the liability relating to communications and the issue of unlawful interference with CNS/ATM systems were two important issues requiring further study. It was decided at the 33rd session of the Assembly that further work should be carried out in that respect.

Regarding item (2), the Secretariat Study Group on Unruly Passengers held its 5th meeting from 19 to 20 April. The Group finalized its work on the draft Model Legislation on Certain Offences Committed On Board Civil Aircraft and completed the review of the guidance material accompanying the draft model legislation. The model legislation was adopted by the Assembly at its 33rd session in its resolution A33-4.

Regarding item (3), the Council, at the 11th meeting of its 162nd session, on 13 March, took a final decision to convene a Diplomatic Conference in Cape Town, South Africa, from 29 October to 16 November under the joint auspices of ICAO and the International Institute for the Unification of Private Law (UNIDROIT), at the invitation of the Government of South Africa, with a view to adopting a convention on international interests in mobile equipment and a protocol thereto on matters specific to aircraft equipment. An ad hoc task force, entrusted with preparatory work for the establishment and operation of an International Registry for international interests in aircraft equipment, met in Dublin from 16 to 18 January and in Washington, D.C., from 13 to 15 February, and prepared a package of documentation which, by decision of the Council, was circulated to Contracting States for information and comments prior to the Diplomatic Conference.

As stated above, the Conference adopted the Convention on International Interests in Mobile Equipment and a related Protocol.

(ii) *Settlement of differences*

Regarding the settlement of differences between the United States and 15 European States (2000) relating to the European "Hushkits" Regulation No. 925/1999,

the Parties, as invited by the Council and as agreed in January, continued direct negotiations, through the good offices of the President of the Council as Conciliator. The President of the Council, as Conciliator, presented progress reports to the Council in June during its 163rd session and in December during its 164th session. It was reported that the Parties were able to reach a consensus on the proposed principles of settlement, taking into account ICAO Assembly resolution A33-7, entitled "Consolidated statement of continuing ICAO policies and practices related to environmental protection", in particular appendices C, D and E, adopted on 5 October by consensus at the 33rd session of the ICAO Assembly. Both Parties expressed satisfaction with the new multilateral framework, which they felt represented a significant step towards settlement of the article 84 dispute between the Parties.

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6. UNIVERSAL POSTAL UNION

1. The 2001 Council of Administration (CA) approved the final report of the High Level Group. It may be recalled that the 1999 Beijing Congress constituted the High Level Group to examine the strategic issues concerning the functioning of the Universal Postal Union in the overall context of the challenges facing the postal sector in the next century and their implications for the role and functioning of the Union in a rapidly changing environment. The Group's mandate was to consider the future mission, structure constituency, financing and decision-making of UPU, with special emphasis on the development needs of postal services in developing countries and the need to more clearly define and distinguish between the governmental and operational role and responsibilities of the bodies of the Union with respect to the provision of international postal services.

The 2001 CA approved the High Level Group recommendations:

- That UPU would continue to remain an intergovernmental organization composed of member countries, but its structure would be based on three circles of interest (government/regulator interests, operator interests), in accordance with UPU agreements and the wide sector;
- That Congress would remain the supreme body of the Union and the duties of the Council of Administration and the Postal Operations Council should be more clearly defined (particularly through continuation of the recasting of the Acts) to reflect the respective government/regulatory and operational interests;
- That the Advisory Group would evolve into a Consultative Committee reflecting wider section interests and with a key role in effecting the broadest possible participation in the work of UPU, including UPU technical cooperation activities. Members of the Council of Administration and the Postal Operations Council should continue to be represented in the Consultative Committee to ensure that the Advisory Group would remain cognizant of the concerns of developing countries;
- That the interval between Congresses should be reduced from five to four years;
- That a new mission statement should be developed.

2. The International Bureau had submitted to the 1988 session of the Executive Council the question of UPU accession to the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. However, the 1988 Executive Council had decided at the time that there was no urgency to accede to the treaty. The International Bureau resubmitted the question to the 2001 CA, which postponed a decision until the 2002 CA, to allow member countries that had not yet consulted their ministries of foreign affairs to do so.

3. An ad hoc group in the High Level Group had made a recast of the Acts mainly with the aim of simplifying the Universal Postal Convention by transferring provisions to the Regulations. The draft Convention was sent to all Union member countries for their views and the 68 countries were satisfied with the draft recast of the Convention. The 2001 CA approved the draft Convention and Final Protocol to be submitted to Congress and instructed the International Bureau to send it to all Union member countries with the draft Regulations prepared by the Postal Operations Council, requesting postal administrations to make their proposals on the basis of the draft Convention.

4. In pursuance of resolution C 107/1999, the International Bureau carried out a study on the regulatory bodies, with respect to mission, functions and relationships with operators working in the postal sector. The study was based on the information available, particularly in the publication "Status and structures of postal administrations". The trend towards a separation of regulatory and operational functions is clear in all of the five geographical groups. The 2001 CA noted the results of the study.

5. The CA Acts of the Union Project Team was constituted. The main tasks assigned to it included questions about reservations to the Acts, continuation of the recasting through substantive proposals designed to harmonize expressions or clarify provisions, and introducing definitions and liaison with the Terminal Dues Action Group, the Liability Project Team and the Transit Systems Project Team to harmonize the texts in their fields with the recast Convention in the other fields.

6. In line with the objectives outlined in Beijing Congress resolution C 18/1999, the CA Universal Postal Service Project Team has started a new study, designing a system to help member countries to measure application of the criteria and standards in the main areas of the Universal Postal Service, on an annual basis. In that regard, a questionnaire was sent to Union member countries, asking them questions about the application of standards in the five main areas of the Universal Postal Service, namely access to services, user/customer satisfaction, speed and reliability, security, and liability and treatment of inquiries. Replies were received from 84 member countries. The International Bureau analysed the replies to the questionnaire and sent them to the United Kingdom of Great Britain and Northern Ireland, which has been nominated as the lead country for the study.

The United Kingdom presented a draft monitoring/measurement system for the application of standards in the main areas of the Universal Postal Service, based on the summary of the replies to the questionnaire prepared by the International Bureau. The document contains questions for internal monitoring, with a view to helping member countries measure their standards. It also suggests recommended methods for applying standards and gathering data. The International Bureau prepared a questionnaire to follow up the monitoring/measurement system. The objective of the questionnaire is to collect the data from the questions asked by the moni-

toring system in order to analyse the extent to which the Universal Postal Service is measured in all UPU member countries. Subject to the supply of the results of the accomplishment of standards by member countries, the International Bureau would publish results worldwide on an annual basis.

The CA endorsed the following decision of the Project Team:

- To give more time to its members to examine the draft monitoring/measurement system and the draft questionnaire;
- To organize a seminar during the 2002 Postal Operations Council meeting at which field experts of member countries will examine the draft monitoring/measurement system and the draft questionnaire;
- To incorporate the monitoring/measurement system into the binder containing the Universal Postal Service Obligations;
- To invite three countries to present papers on Universal Postal Service management, during the symposium to be organized during the next Postal Operations Council meeting.

7. The Project Team on CA Relations with WTO was created to enhance awareness among UPU members, of WTO affairs through circular letters and a web page on the UPU site. The International Bureau keeps the Project Team up to date as regards the negotiations mandated by the General Agreement on Trade in Services (GATS) which had started in February 2000. Furthermore, the International Bureau provides member countries with additional documentation on the GATS and its implications for postal services, including the arguments on different sides of the issues that would aid postal operators and regulators in discussions with their trade representatives. In that regard, the International Bureau issued circular letter 3600(DER.PAR)1588 of 11 September 2001, informing member countries of the progress of negotiations, of the results of a survey on postal participation in the negotiations and of the lack of progress on the signing of a Memorandum of Understanding between WTO and UPU. Following the publication of the letter, Mercosur (States parties, through the *pro tempore* chairmanship of Uruguay) and Bolivia presented a proposal to WTO. The authors wished to modify the current system of classification to include "courier services" and "postal services" as members could not perceive any difference between operators of postal services and operators of courier services in terms of service provision. Mercosur and Bolivia also recommended closer cooperation between WTO and UPU, especially the reciprocal granting of observer status. Switzerland submitted a proposal to WTO regarding the postal sector. It supported the classification proposal by the European Communities; proposed that WTO members should undertake full market access and national treatment commitments with respect to cross-supply of services, consumption abroad and commercial presence for non-reserved services; stressed the importance of the adoption of regulatory disciplines in schedules of specific commitments to protect against distortion in liberalized markets; and proposed to include air transport more comprehensively to promote the liberalization of postal services.

8. The 1998 CA had received a request from one member country to consider the question of postal administrations establishing extraterritorial offices of exchange, that is, setting up exchange offices in the territory of another country. The problem has to be examined within the scope of national legislation to determine whether items dispatched from these offices of exchange may be:

- Accompanied by UPU forms

- Accorded International Air Transport Association (IATA)/UPU air conveyance conditions and rates
- Cleared through customs following postal procedures
- Subject to UPU terminal dues

Various objections/questions were raised by the different entities. IATA first requested a definition of operators that are authorized to tender mail on UPU forms. The International Express Carriers Conference explained that some private companies appeared to have access to UPU terminal dues rates because of arrangements with postal administrations, while other private companies did not enjoy equal access. One member country requested an urgent study of the issue, in part because of the emergence of developing country exchange offices established in industrialized countries to attract traffic that could benefit from the lower terminal dues rates offered for mail dispatched by developing countries.

The initial phase of the study will attempt to determine:

(*a*) Legal issues raised in connection with extraterritorial offices of exchange and items dispatched from them in different member countries;

(*b*) Current practice regarding extraterritorial offices of exchange.

The CA will be asked to determine how to deal with regulatory issues raised by extraterritorial offices of exchange, for example:

(*a*) Whether they are included under the concept of the "single postal territory";

(*b*) Whether it is necessary to clarify the issue in the Convention;

(*c*) Whether the status of items exchanged by these offices should continue to be a matter determined by each country's national legislation;

(*d*) Whether article 43 may be applied to items received from these offices.

The International Bureau presented the results of its initial survey of Union member countries to the 2001 CA. It also presented a resolution, which was approved by the CA. In the resolution, the Council of Administration, among other things, allowed provisionally the administrations accepting dispatches from extraterritorial offices of exchange to apply the provisions of the Universal Postal Convention to such dispatches. Concerning remuneration in such cases, the dispatch of items via an extraterritorial office of exchange should not result in a decrease of remuneration (including, where applicable, the payment of the Quality of Service Fund provided for in article 50.1.1.1 of the Convention) that the destination country would receive for the delivery of items. The approval of the resolution was not meant to require an administration to accept items from an extraterritorial office of exchange as mail under the UPU Acts. The above arrangement is valid, at the latest, until the entry into force of the decisions of the 2004 Congress. The 2001 CA further requested the Postal Operations Council to continue studying the marketing and operational aspects of the issue of extraterritorial offices of exchange.

7. INTERNATIONAL MARITIME ORGANIZATION

(*a*) Membership of the organization

During 2001 the Comoros, Saint Kitts and Nevis and the Republic of Moldova became members of the organization. Membership of the organization now stands at 161. There are also two associate members.

(*b*) Review of the legal activities of IMO

During the spring of 2001, a Diplomatic Conference was convened to adopt the draft Convention on Civil Liability for Bunker Oil Pollution Damage. Consequently, there was no meeting of the Legal Committee in the spring. The Committee, however, held its eighty-third session in October.[158]

Provision of financial security

(i) *Amendments to the Athens Convention*

The Committee discussed the remaining outstanding issues, and among other things decided:

(*a*) To maintain the present burden of proof which requires the claimant, in case of a non-shipping incident, to prove that the incident occurred through the fault or neglect of the carrier;

(*b*) To apply a "per incident" (vice "per carriage") limitation of liability for personal injuries and death;

(*c*) To apply a "per passenger" (vice "per ship") limitation of the insurance cover;

(*d*) To allow the insurer to use the wilful misconduct of the carrier as a defence against any claim;

(*e*) To revise the provision concerning suspension of the time by which a claim must be submitted when the claimant is unaware of the damage.

The specific limitation amounts were left to be decided by the Diplomatic Conference.

The Committee decided to retain in square brackets a proposal for the inclusion of an article which would allow an "economic integration organization" to become party to the Protocol. It introduced further amendments of a drafting/editorial kind to the draft Protocol.

The Committee also endorsed its previous decision to recommend to the Council that a Diplomatic Conference to consider the draft Protocol be convened during the next biennium back-to-back with a session of the Legal Committee. In so doing it noted that the draft text had good prospects for adoption at the Conference and good prospects for subsequent implementation by States.

(ii) *Report of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers at its second and third sessions*

The Committee took note of the report on the deliberations of the Joint IMO/ILO Ad Hoc Expert Working Group to consider the subject of liability and compen-

sation regarding claims for death, personal injury and abandonment of seafarers at its second and third sessions.

The Committee approved the text of two draft Assembly resolutions, namely, the draft resolution and related guidelines on provision of financial security in case of abandonment of seafarers and the draft resolution and related guidelines on shipowners' responsibilities in respect of contractual claims for personal injury to or death of seafarers. The Committee recommended to the Council that the draft Assembly resolutions be submitted to the Assembly for consideration and adoption.

The Committee approved the continuation of the Joint Working Group and decided that the task of keeping the prospective guidelines under review and amending them as necessary should be added to its proposed terms of reference.

The IMO Assembly at its twenty-second session (November 2001) adopted the draft resolutions and related guidelines by resolutions A.930(22) and A.931(22), respectively, both of 29 November 2001. The resolutions and guidelines were also adopted by the Governing Body of the International Labour Office (ILO) at its 282nd session (6 November 2001) (GB.282/10 and GB.282/STM/5). Both guidelines took effect on 1 January 2002.

Draft convention on wreck removal

The Legal Committee continued its work on this agenda item as one of its priority items and agreed that substantive discussions be held on this agenda item at its eighty-fourth session. The Committee also restated its aim to approve a draft convention in time to be considered by a diplomatic conference during the 2004-2005 biennium.

Monitoring the implementation of the HNS Convention

The Committee approved a draft Assembly resolution on implementation of the HNS Convention prepared by the Correspondence Group established at its eightieth session. The draft was approved by the Assembly at its twenty-second session in November 2001, by resolution A.932(22).

Work programme and meeting dates for 2002

The Committee approved its work programme for the year 2002 as follows:

(*a*) Consideration of a draft convention on wreck removal;

(*b*) Consideration of a draft protocol to amend the 1992 Fund Convention;

(*c*) Monitoring the implementation of the HNS Convention;

(*d*) Provision of financial security: Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers;

(*e*) Review of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988 (SUA Convention and Protocol);

(*f*) Places of refuge;

(*g*) Matters arising from the work of the Council and the Assembly.

The Committee noted that there was currently no compelling need to adopt a treaty on offshore mobile craft and agreed to delete the subject from its work programme for the year 2002.

The Committee agreed upon the following meeting dates for the year 2002:

84th session 22 to 26 April 2002

85th session 21 to 25 October 2002

Review of the status of conventions and other treaty instruments adopted as a result of the work of the Legal Committee

The Committee took note of the information provided by the Secretariat and by member States on the status of conventions and other treaty instruments adopted as a result of the work of the Legal Committee.

Technical cooperation: subprogramme for maritime legislation

The Committee noted the progress report on the implementation of the subprogramme from July 2000 to June 2001.

Matters arising from the eighty-fifth and eighty-sixth sessions of the Council

The Legal Committee agreed that its long-term work plan should include the following items:

Specific subjects

(*a*) Completion of preparatory work on a convention on wreck removal;

(*b*) Monitoring the work of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers;

(*c*) Revision of the SUA Convention and Protocol;

(*d*) Follow-up action regarding the question of places of refuge;

(*e*) Possible comprehensive revision of the Civil Liability and Fund Conventions on liability and compensation for oil pollution damage;

(*f*) Monitoring the implementation of the HNS Convention.

General subjects

(*a*) Possible revision of maritime law conventions in the light of proven need and subject to the directives in resolution A.500(XII) and resolution A.900(21);

(*b*) Monitoring the implementation of conventions adopted as a result of the work of the Legal Committee;

(*c*) Examination of issues relating to the role of the organization under the United Nations Convention on the Law of the Sea;

(*d*) Promotion of the IMO technical cooperation subprogramme in the field of maritime legislation;

(*e*) Legal issues arising in other IMO bodies and referred to the Legal Committee;

(*f*) Coordination and cooperation with the United Nations and other United Nations specialized agencies in legal matters of common interest;

(*g*) Examination of maritime law initiatives undertaken by member States or non-governmental bodies.

The Committee stated its readiness to include the consideration of a draft protocol to the 1992 Fund Convention as a priority item in its work programme for the next biennium.

With respect to applications for consultative status, the Committee recommended that consultative status should be granted to World LP Gas Association. The Committee further agreed to maintain the provisional consultative status of the International Ship Suppliers Association.

Other matters

Other matters dealt with by the Committee included:

(*a*) Welcoming the adoption of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 and urging States to give early consideration with a view to signing and ratifying the new instrument;

(*b*) Approving a draft Assembly resolution on uniform wording for referencing IMO instruments, which was subsequently adopted by the Assembly at its twenty-second session in November 2001 by resolution A.911(22);

(*c*) Noting the intentions of the Comité Martitime International (CMI) regarding its future work, in particular its plan to assist Governments in developing legislation for the interpretation of IMO-sponsored international conventions in a consistent and coherent manner;

(*d*) Noting the information provided by CMI concerning the manner in which the 1976 Convention on Limitation of Liability for Maritime Claims (LLMC Convention) has been implemented by States and the way in which its provisions have been interpreted and applied;

(*e*) Deciding to include the question of places of refuge in its work programme for the next biennium. In order to prepare for this task, the Committee also decided to give a mandate to the Secretariat to make a study of the relevant legal issues, which included both public law and private law questions. The Committee accepted the offer of CMI to collaborate with the Secretariat on this project;

(*f*) Considering and supporting the request made by the Secretary-General that priority be given in the work programme for the next biennium to the question of a review of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988 (the SUA treaties).

(*c*) Treaties

During 2001, two treaties[159] concerning international law were concluded under the auspices of the International Maritime Organization, as follows:

(i) *International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001*

The International Conference on Liability and Compensation for Bunker Oil Pollution Damage, held in London from 19 to 23 March 2001, adopted the Inter-

national Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, on 23 March 2001. The Convention was adopted to ensure that adequate, prompt and effective compensation is available to persons who suffer damage caused by spills of oil when carried as fuel in ships' bunkers.

(ii) *International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001*

The International Conference on the Control of Harmful Anti-Fouling Systems for Ships, held in London from 1 to 5 October 2001, adopted the International Convention on the Control of Harmful Anti-Fouling Substances on Ships, 2001, on 5 October 2001. The Convention prohibits the use of harmful organotins in anti-fouling paints used on ships and establishes a mechanism to prevent the potential future use of other harmful substances in anti-fouling systems. Under the terms of the Convention, parties are required to prohibit and/or restrict the use of harmful anti-fouling systems on ships flying their flag, as well as ships not entitled to fly their flag but which operate under their authority and all ships that enter a port, shipyard or offshore terminal of a party.

(*d*) Amendments to treaties

2001 (Annex I) amendments to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973

These amendments were adopted by the Marine Environment Protection Committee on 27 April 2001 by resolution MEPC.95(46). At the time of their adoption, the Committee determined that the amendments shall be deemed to have been accepted on 1 March 2002, and shall enter into force on 1 September 2002, unless, prior to 1 March 2002, not less than one third of the parties or parties the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet have communicated to the organization their objection to the amendments. No notifications of objection have been received to date.

2001 amendments to the International Convention for the Safety of Life at Sea, 1974

These amendments were adopted by the Maritime Safety Committee on 6 June 2001 by resolution MSC.117(74). At the time of their adoption, the Committee determined that the amendments shall be deemed to have been accepted on 1 July 2002, and shall enter into force on 1 January 2003, unless, prior to 1 July 2002, not less than one third of the Contracting Governments to the Convention, or Contracting Governments the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet have notified their objections to the amendments.

2001 amendments to the International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships (INF Code)

These amendments were adopted by the Maritime Safety Committee on 6 June 2001 by resolution MSC.118(74). At the time of their adoption, the Committee de-

termined that the amendments shall be deemed to have been accepted on 1 July 2002, and shall enter into force on 1 January 2003, unless, prior to 1 July 2002, not less than one third of the Contracting Governments to the Convention or Contracting Governments the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet have notified their objections to the amendments.

2001 amendments to the International Code of Safety for High-Speed Craft (HSC Code)

These amendments were adopted by the Maritime Safety Committee on 6 June 2001 by resolution MSC.119(74). At the time of their adoption, the Committee determined that the amendments shall be deemed to have been accepted on 1 July 2002, and shall enter into force on 1 January 2003, unless, prior to 1 July 2002, not less that one third of the Contracting Governments to the Convention, or Contracting Government 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.

2001 amendments to the International Regulations for Preventing Collisions at Sea, 1972

These amendments were adopted by the Assembly on 29 November 2001 by resolution A.910(22). At the time of their adoption, the Assembly decided, in accordance with paragraph 4, article VI, of the Convention on the International Regulations for Preventing Collisions at Sea, 1972, that the amendments shall be deemed to have been accepted on 29 May 2002, and shall enter into force on 29 November 2003, unless, prior to 29 May 2002, not less than one third of the Contracting Parties have notified their objection to the amendments. As at 28 February 2002, no notification of objection had been received.

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8. WORLD INTELLECTUAL PROPERTY ORGANIZATION

Introduction

1. In 2001, WIPO concentrated on the implementation of substantive work programmes through three sectors: cooperation with member States, the international registration of intellectual property titles, and intellectual property treaty formulation and normative development. WIPO also continued focusing resources and expanding the scope of the programmes on traditional knowledge, genetic resources, folklore and electronic commerce.

Cooperation for Development activities

2. In 2001, the Cooperation for Development programme sharpened its focus on assisting developing countries in optimizing their use of the intellectual property system for their economic, social and cultural benefit. Efforts aimed at building strong administrative infrastructures, training, and the preparation and implementation of laws reached a new level of efficiency with the introduction of a Cooperation for Development web site in 2001.

3. The second session of the Permanent Committee on Cooperation for Development Related to Intellectual Property was held in 2001, bringing together representatives from 84 countries and 19 intergovernmental and non-governmental organizations. Participants held discussions on recent developments in intellectual property-related issues and considered their impact on further cooperation activities.

4. By the end of 2001, 56 nationally (or regionally) focused action plans were being implemented. Such country- or region-specific action plans established jointly between the individual Governments and WIPO are aimed at helping national Governments to establish a more efficient management system and use of the national intellectual property system. Each plan identifies the immediate priorities necessary to achieve these objectives.

5. In 2001, WIPO provided 28 draft laws for 14 developing countries or regional organizations, and written comments on another 46 draft laws received from 30 countries.

6. At the end of 2001, 1,915 documents were available on the Collection of Laws for Electronic Access (CLEA) database covering 65 countries, compared with 35 countries represented at the end of 2000. The success of CLEA in disseminating intellectual property laws has grown as well: in 2001, the number of hits increased by 57 per cent to some 4 million.

7. In 2001, the WIPO Worldwide Academy trained some 4,344 men and women, an increase of 86 per cent over the previous year.

Norm-setting activities

8. 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.

9. Accelerating the growth of international common principles and rules governing intellectual property requires extensive consultations. Three WIPO Standing Committees on legal matters—one dealing with copyright and related rights, one dealing with patents, and one dealing with trademarks, industrial designs and geographical indications—help member States coordinate efforts in these areas and establish priorities.

Standing Committee on the Law of Patents

10. In 2001, the Standing Committee on the Law of Patents began discussions on the harmonization of substantive patent law, with the objective of reaching common worldwide standards for the examination of patent applications and the grant of patents.

Standing Committee on Trademarks

11. WIPO member States adopted a set of provisions aimed at providing a clear, harmonized and simplified legal framework for the trademark community. Indeed, provisions concerning the protection of marks and other industrial property rights in signs on the Internet were adopted by the WIPO Assemblies as a joint recommendation.

Standing Committee on Copyright and Related Rights

12. In 2001, the Standing Committee on Copyright and Related Rights continued to consider the enhancement of protection for broadcasting organizations and of non-original databases.

Standing Committee on Information Technologies

13. In 2001, the Standing Committee on Information Technology approved reforms to increase the role of member States in the monitoring of WIPO information technology activities and to place more emphasis on electronic communication in order to accelerate decision-making. The restructuring created two new working groups to replace the Committee plenary's existing subsidiary structure: the Standards and Documentation Working Group and the Information Technology Projects Working Group.

International registration activities

14. In 2001, the WIPO global protection systems generated a total gross revenue of about 221 million Swiss francs, the equivalent of about 85 per cent of the organization's total income for 2001.

Patents

15. The Patent Cooperation Treaty (PCT) continued its steady growth throughout 2001. By the end of the year, the total number of international patent applications had reached 103,947, an increase of 14.3 per cent over 2000. The number of countries participating in the PCT system had risen as well, to 115.

16. In September, the PCT member States decided on a fee decrease in respect of the designation fees. This fee decrease is equivalent to a reduction of 7.1 per cent in PCT fees for those PCT applicants who make over five country designations per application (about two thirds of applicants).

17. In May, WIPO launched practical work involving member States, international searching and preliminary examining authorities, and intergovernmental and non-governmental organizations, with the aim of reforming the PCT system.

PCT electronic filing

18. Some 35 per cent of all applications in 2001 used PCT-EASY (Electronic Application System) software. The total number of registered users for PCT-EASY reached 7,500 in 2001.

Marks

19. The number of international trademark registrations recorded in 2001 was almost 24,000, an increase of 4.4 per cent over the previous year.

20. Over the course of the year, six States became bound by the Madrid Protocol, bringing the total to 55 and the total membership of the Madrid Union to 70.

Industrial designs

21. The number of international deposits recorded in 2001 decreased by 3.5 per cent to 4,183, largely attributable to a general worldwide economic slowdown.

22. The Hague Assembly approved a proposal to reduce the publication fee for international deposits by 10 per cent and to simplify its calculation.

23. WIPO received the first three instruments of ratification or accession to the Geneva Act of the Hague Agreement in 2001.

Appellations of origin

24. The Lisbon Assembly adopted new Regulations for the application of the Lisbon Agreement. The new Regulations, which clarify the procedures relating to the international protection of appellations of origin, will come into force in 2002.

Electronic commerce; Internet domain names

25. WIPO organized the Second International Conference on Electronic Commerce and Intellectual Property in Geneva from 19 to 21 September 2001. The Conference addressed the latest developments in electronic commerce and intellectual property—legal, technical and policy-oriented—and was attended by some 500 professionals and senior policy makers in government, law, business and the technical sectors concerned with the Internet, electronic commerce and intellectual property rights.

26. WIPO published in September 2001 the final report of the Second WIPO Internet Domain Name Process, entitled "The Recognition of Rights and the Use of Names in the Internet Domain Name System", and submitted it to the member States and the Internet community. WIPO member States decided in September to subject the report to a comprehensive analysis by the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, in two special sessions convened for the purpose. The first special session was held in November and December 2001 and the second would be held in May 2002.

WIPO Arbitration and Mediation Centre

27. In 2001, the Arbitration and Mediation Centre expanded its position as the pre-eminent provider of services for domain name and other intellectual property issues. The Centre received 3,192 domain name cases during the year.

28. The Centre expanded its service to include disputes concerning names registered in new domains, such as the *.biz* and *.info* domains.

29. The Centre's web site, which by the end of the year was receiving over 1.4 million hits per month, was expanded with a range of new services. Daily notifications of the most recently posted Uniform Domain Name Dispute Resolution Policy decisions were also made available by electronic mail.

Intellectual property and global issues

30. The first two sessions of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore were held in 2001 and made significant progress in clarifying the issues and developing practical solutions. Some 400 representatives of States, intergovernmental agencies and organizations, and NGOs attended each session.

31. WIPO published in 2001 the final report on the fact-finding missions on traditional knowledge conducted in 28 countries in 1998 and 1999.

32. Throughout the year, national workshops were held in Jamaica and Suriname, as well as a regional workshop for the South Pacific in Australia. In addition, a WIPO Asia Pacific Regional Symposium on Intellectual Property Rights, Traditional Knowledge and Related Issues in Yogyakarta, Indonesia, was attended by participants from 21 countries in the Asia and the Pacific region.

Online services

33. The organization continued to expand its online presence, using the latest information technology to reach the widest possible audience worldwide. A Russian-language version of the WIPO web site went online in September 2001, and work started on a Chinese language version, with a launch planned for late 2002.

New members and new accessions

34. Highlights in 2001 include: (*a*) the deposit of the 30th instrument of accession by Gabon to the WIPO Copyright Treaty, which paved the way for its entry into force in March 2002; (*b*) an increase in WIPO membership to 178; (*c*) an increase in membership of the PCT Union to 115.

35. In 2001, WIPO received and processed 64 instruments of ratification or accession to WIPO-administered treaties. The following figures show the new adherences to treaties that are in force, with the second figure in brackets being the total number of States party to the corresponding treaty by the end of 2001:

- Convention Establishing the World Intellectual Property Organization: 3 (178)
- Paris Convention for the Protection of Industrial Property: 2 (162)
- Patent Cooperation Treaty: 6 (115)
- Protocol relating to the Madrid Agreement concerning the International Registration of Marks: 6 (55)
- Patent Law Treaty: 1 (1)
- Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods: 1 (33)
- Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks: 3 (68)
- Lisbon Agreement for the Protection of Appellations of Origin and their International Registration: 1 (20)
- Locarno Agreement Establishing an International Classification for Industrial Designs: 1 (40)
- Strasbourg Agreement concerning the International Patent Classification: 4 (51)
- Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks: 2 (19)
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure: 4 (53)
- Berne Convention for the Protection of Literary and Artistic Works: 1 (148)

- Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms: 3 (67).

36. Furthermore, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (the WIPO ''Internet Treaties") received, respectively, 9 and 10 new adherences, bringing the total to, respectively, 30 and 28 at the end of 2001.

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9. UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

UNIDO concluded the following agreements and memoranda of understanding:

(*a*) Agreements with Governments

(i) Exchange of Letters between the Chargé d'affaires ad interim of the Permanent Mission of Japan to the United Nations Industrial Development Organization and the Director-General of the United Nations Industrial Development Organization concerning the contribution of the Government of Japan for the UNIDO Service for the Promotion of Industrial Investment in Developing Countries from 1 September 2001 to 31 December 2004. Signed on 28 August;

(ii) Memorandum of Understanding on the Arrangement between the Netherlands Minister for Development Cooperation and the United Nations Industrial Development Organization concerning the Netherlands Junior Professional Officers/Associate Experts Programme. Signed on 27 August and 8 September, respectively;

(iii) Agreement between the United Nations Industrial Development Organization and the Government of Cameroon regarding the organization of the 15th meeting of the Conference of African Ministers of Industry (CAMI—XV). Signed on 12 September;

(iv) Memorandum of Understanding between the United Nations Industrial Development Organization and the Secretariat for Industry of the Republic of Argentina. Signed on 3 October;

(v) Cooperation Agreement between the United Nations Industrial Development Organization and the Bolivarian Republic of Venezuela. Signed on 17 October;

(vi) Joint communiqué between the Permanent Representative of Italy to the United Nations Industrial Development Organization and the Director-General of the United Nations Industrial Development Organization. Signed on 29 November;

(vii) Memorandum of Understanding between the United Nations Industrial Development Organization and the Government of Mongolia on the establishment of a framework for cooperation in sustainable industrial development. Signed on 4 December;

(viii) Agreement between the United Nations Industrial Development Organization and the Government of the Federal Republic of Nigeria regarding the establishment of a UNIDO regional industrial development centre (regional office) in the Federal Republic of Nigeria. Signed on 4 December;

(ix) Memorandum of Understanding between the Republic of Peru and the United Nations Industrial Development Organization. Signed on 7 December;

(*b*) Agreements with the United Nations and specialized agencies

(i) Memorandum of Understanding between the International Atomic Energy Agency, the United Nations Office at Vienna, the United Nations Industrial Development Organization and the Preparatory Commission for the Comprehensive Nuclear Test-Ban Treaty Organization concerning the construction and operation of the new VIC Child Care Facility. Signed on 23 November and 20 December 2000, and 2 and 8 January 2001, respectively;

(ii) Memorandum of Understanding between the secretariats of the United Nations Industrial Development Organization and the United Nations Economic Commission for Europe. Signed on 27 April;

(iii) Cooperation Agreement between the United Nations Industrial Development Organization and the International Trade Centre (UNCTAD/WTO). Signed on 24 August;

(iv) Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Executive Secretary of the United Nations Economic and Social Commission for Western Asia. Signed on 28 September;

(*c*) Agreements with other intergovernmental, governmental, non-governmental and other organizations and entities

(i) Memorandum of Understanding between the United Nations Industrial Development Organization and the Centre National de la Recherche Scientifique. Signed on 24 January;

(ii) Memorandum of Understanding between the United Nations Industrial Development Organization, the International Organization for Standardization and the International Laboratory Accreditation Cooperation in the field of laboratory accreditation. Signed on 30 October 2000 and 1 February 2001, respectively;

(iii) Agreement between the United Nations Industrial Development Organization and the State Government of Pernambuco, Brazil, on the establishment of a UNIDO Investment and Technology Promotion Office in Recife. Signed on 21 March;

(iv) Memorandum of Understanding on scientific and technological cooperation between the United Nations Industrial Development Organization and the Commission on Science and Technology for Sustainable Development in the South. Signed on 25 April;

(v) Letter Agreement attaching a Memorandum of Understanding between the United Nations Industrial Development Organization and the GEF Secretariat on project preparation and development facility grants and expedited enabling activity grants related to the Stockholm Convention on Persistent Organic Pollutants. Signed on 12 July;

(vi) Financial procedures agreement between the United Nations Industrial Development Organization and the International Bank for Reconstruction and Development, as Trustee of the Global Environment Facility Trust Fund. Signed on 12 July;

(vii) Memorandum of Understanding on technical cooperation between the United Nations Industrial Development Organization and the Small and Medium Enterprise Development Authority of the Government of Pakistan. Signed in July;

(viii) Cooperation Agreement between the United Nations Industrial Development Organization and the Western African Economic and Monetary Union. Signed on 17 September;

(ix) Memorandum of Understanding between the United Nations Industrial Development Organization and the African Capital Alliance (ACA) on a UNIDO-ACA Partnership for SME [small and medium-sized enterprises] Development. Signed on 4 December;

(x) Memorandum of Understanding between the United Nations Industrial Development Organization and the Lagos Business School (LBS) on a UNIDO-LBS Partnership for SME Development. Signed on 4 December;

(xi) Cooperation Agreement between the Economic and Social Development Bank of Venezuela and the United Nations Industrial Development Organization. Signed on 11 December.

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10. INTERNATIONAL ATOMIC ENERGY AGENCY

Convention on the Physical Protection of Nuclear Material[160]

In 2001, Trinidad and Tobago adhered to the Convention. By the end of the year, there were 69 parties.

Convention on Early Notification of a Nuclear Accident[161]

In 2001, Saint Vincent and the Grenadines adhered to the Convention. By the end of the year, there were 87 parties.

Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency[162]

In 2001, Saint Vincent and the Grenadines adhered to the Convention. By the end of the year, there were 83 parties.

Vienna Convention on Civil Liability for Nuclear Damage, 1963[163]

In 2001, Saint Vincent and the Grenadines adhered to the Convention. By the end of the year, there were 33 parties.

Optional Protocol concerning the Compulsory Settlement of Disputes[164]

In 2001, the status of the Protocol remained unchanged, with two parties.

Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention[165]

In 2001, Germany, Greece and Saint Vincent and the Grenadines adhered to the Protocol. By the end of the year, there were 24 parties.

Convention on Nuclear Safety[166]

In 2001, the status of the Convention remained unchanged, with 53 parties.

Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management[167]

In 2001, Austria, Ireland, Luxembourg and the United Kingdom of Great Britain and Northern Ireland adhered to the Convention. By the end of the year, there were 27 parties. The Convention, pursuant to article 40.1, entered into force on 18 June 2001, i.e. on the ninetieth day after the day of deposit with the depositary of the twenty-fifth instrument of ratification, acceptance or approval, including the instruments of 15 States each having an operational nuclear power plant.

Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage[168]

In 2001, Latvia signed the Protocol and adhered to it. By the end of the year, there were 4 Contracting States and 15 signatories.

Convention on Supplementary Compensation for Nuclear Damage[169]

In 2001, the status of the Convention remained unchanged, with 3 Contracting States and 13 signatories.

African Regional Cooperative Agreement for Research, Development and Training Related to Nuclear Science and Technology[170] *(AFRA) (Second Extension)*

In 2001, Sierra Leone and the Sudan adhered to the Agreement. By the end of the year, there were 22 parties.

Second Agreement to Extend the 1987 Regional Cooperative Agreement for Research, Development and Training Related to Nuclear Science and Technology[171] *(RCA)*

In 2001, the status of the Agreement remained unchanged, with 17 parties.

Cooperation Agreement for the Promotion of Nuclear Science and Technology in Latin America and the Caribbean (ARCAL)[172]

In 2001, El Salvador, Nicaragua and Panama signed the Agreement and Costa Rica, Ecuador, El Salvador and Peru adhered to it. By the end of the year, there were 5 Contracting States and 17 signatories.

Revised Supplementary Agreement concerning the Provision of Technical Assistance by IAEA (RSA)

In 2001, Burkina Faso, Estonia and Georgia concluded the Agreement. By the end of the year, there were 95 States that had concluded the RSA Agreement.

IAEA legislative assistance activities

As part of its technical cooperation programme for 2001-2002, IAEA provided legislative assistance to a number of member States from various regions through both bilateral meetings and regional workshops. Legislative assistance was given to 15 countries by means of written comments or advice on specific national legislation submitted to the Agency for review.

In addition, the legislative assistance activities of IAEA in 2001 included:

— A regional workshop for English-speaking countries of the Africa region on the establishment of a legal framework governing radiation protection, the safety of radiation sources and the safe management of radioactive waste, held in Addis Ababa, from 23 to 27 April 2001;

— A regional workshop for countries of the Europe and West Asia regions on the effective implementation of national nuclear legislation, held in Valletta from 26 to 30 November 2001;

— A regional workshop for the Latin America region on the establishment of a legal framework governing radiation protection, the safety of radiation sources and the safe management of radioactive waste, held at the IAEA headquarters in Vienna from 29 October to 2 November 2001.

Convention on the Physical Protection of Nuclear Facilities

The issue of the amendment of the Convention on the Physical Protection of Nuclear Material continued to be addressed during 2001.

In May 2001, the expert meeting, in its final report to the Director General, concluded that there was "a clear need to strengthen the international physical protection regime" and that a spectrum of measures should be employed, including the drafting of a well-defined amendment to strengthen the Convention, to be reviewed by States parties with a view to determining if it should be submitted to an amendment conference in accordance with article 20 of the Convention. The well-defined amendment should address the following subjects: extension of the scope to cover, in addition to nuclear material in international nuclear transport, nuclear material in domestic use, storage and transport, as well as protection of nuclear material and facilities from sabotage; the importance of national responsibility for physical protection; the importance of protection of confidential information; the physical protection objectives and fundamental principles; and relevant definitions. The meeting recommended that other issues should not be included in the amendment of the Convention, namely, a requirement to submit reports to the international community on the implementation of physical protection; a peer review mechanism; a mandatory

application of INFCIRC/225, e.g. through direct reference and also through "due consideration"; mandatory international oversight of physical protection measures; and nuclear material and nuclear facilities for military use.

The Director General, in response to the recommendations of the expert meeting, convened an open-ended group of legal and technical experts to draft an amendment. The meeting, which was held in December and involved 43 States and the European Commission, achieved a complete and detailed review of the scope of the potential amendments to the Convention. The group would continue its work in 2002.

Convention on Nuclear Safety

The organizational meeting for the Second Review Meeting was held at the headquarters of the International Atomic Energy Agency in Vienna on 25 and 26 September 2001. Forty-one out of 53 parties participated.

The second Review Meeting pursuant to article 20 of the Convention would be held at the headquarters of the International Atomic Energy Agency, being the Secretariat under the Convention, from 15 to 26 April 2002.

Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management

The Convention, pursuant to its article 40.1, entered into force on 18 June 2001.

The preparatory meeting, pursuant to article 29 of the Convention, was held at the headquarters of the International Atomic Energy Agency in Vienna from 10 to 12 December 2001. All 27 parties attended.

At the preparatory meeting, the parties adopted the rules of procedure and financial rules and established guidelines on the form and structure of national reports and on the process for reviewing the reports. The meeting also fixed the dates of the first Review Meeting (3-14 November 2003) and of the related organizational meeting (7-11 April 2003) as well as the deadline for submission of national reports (5 May 2003).

Safeguards Agreements

During 2001, a Safeguards Agreement pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons entered into force with the Lao People's Democratic Republic.[173] Two Safeguards Agreements, pursuant to the Non-Proliferation Treaty, were signed with Andorra and Oman, and a Safeguards Agreement under the Non-Proliferation Treaty with the Niger was approved by the IAEA Board of Governors. These agreements have not yet entered into force.

Through an Exchange of Letters between Colombia and the Agency, it was confirmed that the Safeguards Agreement concluded between Colombia and IAEA satisfied the obligations of Colombia under the Non-Proliferation Treaty pursuant to the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) to conclude a comprehensive Safeguards Agreement.

Protocols additional to the Safeguards Agreements between IAEA and Bangladesh,[174] Ecuador[175] Latvia,[176] Panama,[177] Peru[178] and Turkey[179] entered into force. Protocols additional to Safeguards Agreements were signed by Andorra, Costa Rica, Guatemala, Mongolia and Nigeria but have not yet entered into force.

By the end of 2001, there were 225 Safeguards Agreements in force with 141 States (as well as Taiwan Province of China). Safeguards Agreements which satisfy the requirements of the Non-Proliferation Treaty were in force with 130 States. By the end of 2001, 61 States had signed an Additional Protocol. Of those 61, 24 had entered into force, and one was being implemented provisionally pending its entry into force.

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11. WORLD TRADE ORGANIZATION

The Director-General of WTO is:

- Right Honourable Mike Moore of New Zealand, until 31 August 2002,

to be followed by

- H.E. Dr. Supachai Panitchpakdi of Thailand, from 1 September 2002 to 31 August 2005.

(*a*) Membership

WTO membership is open to any State or customs territory having full autonomy in the conduct of its trade policies. Accession negotiations concern all aspects of the applicant's trade policies and practices, such as market access concessions and commitments on goods and services, legislation to enforce intellectual property rights, and all other measures which form a Government's commercial policies. Applications for WTO membership are the subject of individual working parties. Terms and conditions related to market access (such as tariff levels and commercial presence for foreign service suppliers) are the subject of bilateral negotiations. The following is a list of 27 Governments for which a working party has been established (still current as of 31 December 2001):

Algeria, Andorra, Armenia, Azerbaijan, Bahamas, Belarus, Bhutan, Bosnia and Herzegovina, Cambodia, Cape Verde, Kazakhstan, Lao People's Democratic Republic, Lebanon, Nepal, Russian Federation, Samoa, Saudi Arabia, Seychelles, Sudan, Tajikistan, the former Yugoslav Republic of Macedonia, Tonga, Ukraine, Uzbekistan, Vanuatu, Viet Nam, Yemen and Yugoslavia.

The Syrian Arab Republic and the Libyan Arab Jamahiriya have requested accession, but working parties have not yet been established.

As of 31 December 2001, there were 144 members of the WTO, accounting for more than 90 per cent of world trade. Many of the countries that remain outside the world trade system have requested accession to WTO and are at various stages of a process that has become more complex due to the organization's more expansive coverage relative to its predecessor, the General Agreement on Tariffs and Trade (GATT).

During 2001, WTO received the following new members:

- Lithuania (31 May 2001) by Protocol of Accession (8 December 2000, WT/ACC/LTU/54); Council decision WT/ACC/LTU/53
- Republic of Moldova (26 July 2001) by Protocol of Accession (8 May 2001, WT/ACC/MOL/40); Council decision WT/ACC/MOL/39
- China (11 December 2001) by Protocol of Accession (23 November 2001, WT/L/432); Council decision WT/L/432
- Chinese Taipei (also known as Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu) (1 January 2002) by Protocol of Accession (11 November 2001, WT/L/433); Council decision WT/L/433

Chinese Taipei became the 144th member of WTO 30 days after WTO received notification of the ratification of the agreement by the Chinese Taipei Parliament.

WTO members (*as of 31 December 2001*)

Albania
Angola
Antigua and Barbuda
Argentina
Australia
Austria
Bahrain
Bangladesh
Barbados
Belgium
Belize
Benin
Bolivia
Botswana
Brazil
Brunei Darussalam
Bulgaria
Burkina Faso
Burundi
Cameroon
Canada
Central African Republic
Chad
Chile
China
Chinese Taipei
Colombia
Congo
Costa Rica
Côte d'Ivoire
Croatia
Cuba
Cyprus
Czech Republic
Democratic Republic of the Congo
Denmark
Djibouti
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
Estonia
European Communities
Fiji
Finland
France
Gabon
Gambia
Georgia
Germany
Ghana
Greece
Grenada
Guatemala
Guinea
Guinea-Bissau
Guyana
Haiti
Honduras
Hong Kong, China
Hungary
Iceland
India
Indonesia
Ireland
Israel
Italy
Jamaica
Japan
Jordan
Kenya
Kuwait
Kyrgyzstan
Latvia
Lesotho
Liechtenstein
Lithuania
Luxembourg
Macao, China
Madagascar
Malawi
Malaysia
Maldives
Mali
Malta
Mauritania
Mauritius
Mexico
Mongolia
Morocco
Mozambique
Myanmar
Namibia
Netherlands
New Zealand
Nicaragua
Niger
Nigeria
Norway
Oman
Philippines
Pakistan
Panama
Papua New Guinea
Paraguay
Peru
Poland
Portugal
Qatar
Republic of Korea
Republic of Moldova
Romania
Rwanda
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Senegal
Sri Lanka
Sierra Leone
Singapore
Slovakia
Slovenia
Solomon Islands
South Africa
Spain
Sweden
Suriname
Swaziland
Switzerland
Thailand
Togo
Trinidad and Tobago
Tunisia
Turkey
Uganda
United Arab Emirates
United Kingdom of Great Britain and Northern Ireland
United Republic of Tanzania
United States of America
Uruguay
Venezuela
Zambia
Zimbabwe

Waivers

In 2001, the Ministerial Conference/General Council granted a number of waivers from obligations under the WTO Agreements (listed below):

Waivers under article IX of the WTO Agreement

Member	*Type*	*Decision of*	*Expiry*	*Document*
Switzerland	Preferences for Albania and Bosnia and Herzegovina	18 July 2001	31 March 2004	WT/L/406
Madagascar	Agreement on the implementation of article VII of GATT 1994	18 July 2001	17 November 2003	WT/L/408
Thailand	Article 5.2 of the Agreement on Trade-related Investment Measures (TRIMs Agreement)	31 July 2001	31 December 2003	WT/L/410
Nicaragua	Implementation of harmonized system	31 October 2001	30 April 2002	WT/L/426
Sri Lanka	Implementation of harmonized system	31 October 2001	30 April 2002	WT/L/427
Zambia	Renegotiation of schedule	31 October 2001	30 April 2002	WT/L/428
European Communities (EC)	African, Caribbean and Pacific (ACP) States/EC Partnership Agreement—Preferential treatment to ACP	14 November 2001	31 December 2007	WT/L/436
Haiti	Customs Valuation Agreement	20 December 2001	30 January 2003	WT/L/439
Cuba	Article XV.6 of GATT 1994	20 December 2001	31 December 2006	WT/L/440
Colombia	Article 5.2 of the TRIMs Agreement	20 December 2001	31 December 2003	WT/L/441
Dominican Republic	Minimum values under the Customs Valuation Agreement	20 December 2001	1 July 2003	WT/L/442

(*b*) Resolution of trade conflicts under the WTO dispute settlement understanding (DSU)

Overview

The General Council convenes as the Dispute Settlement Body (DSB) to deal with disputes arising from any agreement contained in the Final Act of the Uruguay Round that is covered by the Understanding on Rules and procedures Governing the Settlement of Disputes (DSU). The DSB has the sole authority to establish dispute settlement panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations, and

authorize the suspension of concessions in the event of non-implementation of recommendations.

Composition of the Appellate Body

On 25 September 2001, the DSB decided to appoint Mr. Baptista (Brazil), Mr. J. Lockhart (Australia) and Mr. G. Sacerdoti (European Communities) to serve on the Appellate Body to replace Mr. Ehlermann (European Communities), Mr. F. Feliciano (Philippines) and Mr. Lacarte-Muró (Uruguay) following the expiration of their terms of office.

Dispute settlement activity for 2001

In 2001, the DSB received 18 notifications from members of formal requests for consultations under the DSU. During this period, the DSB established panels to deal with 13 cases in 12 distinct matters and adopted panel and/or Appellate Body reports in 13 cases concerning 12 distinct matters. The DSB also received five notifications from members of a mutually agreed solution (settlement) of dispute.

The following section briefly describes the procedural history and the substantive outcome of the adopted panel and/or Appellate Body reports. It also provides the lists of active panels, requests for consultations and notifications of a mutually agreed solutions.

Appellate Body and/or panel reports adopted

Thailand—Anti-dumping duties on angles, shapes and sections of iron or non-alloy steel and H-beams from Poland, complaint by Poland (WT/DS122). The dispute concerns the imposition of final anti-dumping duties on imports of certain steel products from Poland. Poland contended that these actions by Thailand violated articles 2, 3, 5 and 6 of the Anti-Dumping Agreement (AD Agreement). At its meeting on 19 November 1999, the DSB established a panel. The European Communities, Japan and the United States reserved their third-party rights. The Panel found that Poland had failed to establish that Thailand's initiation of the anti-dumping investigation on imports of H-beams from Poland was inconsistent with the requirements of articles 5.2, 5.3 and 5.5 of the AD Agreement or article VI of the GATT 1994. The panel also concluded that Poland had failed to establish that Thailand had acted inconsistently with its obligations under article 2 of the AD Agreement or article VI of GATT 1994 in the calculation of the amount for profit in constructing normal value. However, the panel found that Thailand's imposition of the definitive anti-dumping measure on imports of H-beams from Poland was inconsistent with the requirements of article 3 of the AD Agreement. The Appellate Body, on appeal by Thailand, upheld the panel's conclusion that, with respect to the claims under articles 2, 3 and 5 of the AD Agreement, the request for the establishment of a panel submitted by Poland in this case was sufficient to meet the requirements of article 6.2 of the DSU. The Appellate Body reversed the finding of the panel that the AD Agreement required a panel reviewing the imposition of an anti-dumping duty to consider only the facts, evidence and reasoning that were disclosed to or discernible by, Polish firms at the time of the final determination of dumping. The Appellate Body was of the view that there was no basis for the panel's reasoning, either in article 3.1 of the AD Agreement, which lays down the obligations of members with respect to the determination

of injury or in article 17.6 of the AD Agreement, which sets out the standard of review for panels. Although the Appellate Body reversed the reasoning of the panel on this issue, it left undisturbed the panel's main findings of violation. The Appellate Body also upheld the panel's conclusions under article 3.4 of the AD Agreement. The Appellate Body agreed with the panel that article 3.4 required a mandatory evaluation of all the factors listed in that provision. Finally, the Appellate Body concluded that the panel had not erred in its application of the burden of proof or in the application of the standard of review under article 17.6(i) of the AD Agreement. The Appellate Body report was circulated to WTO members on 12 March 2001. The DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report, on 5 April 2001.

European Communities—Measures affecting asbestos and asbestos-containing products, complaint by Canada (WT/DS135). The dispute concerns a French decree of 24 December 1996 imposing prohibitions on the manufacture, processing, sale, import, etc., of asbestos and products containing asbestos. The measure also includes certain temporary and limited exceptions to these prohibitions. Canada claimed that the decree violated articles 2 and 5 of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), article 2 of the Agreement on Technical Barriers to Trade (TBT Agreement) and articles III and XI of GATT 1994. Canada also argued, under article XXIII.1(*b*), nullification and impairment of benefits accruing to it under the various agreements cited. Canada's claims related to the restrictions imposed on one type of asbestos, namely chrysotile (or white) asbestos, and products containing chrysotile. The DSB established a panel at its meeting of 25 November 1998. Brazil, the United States and Zimbabwe reserved their third-party rights. The panel found that the TBT Agreement applied to the exceptions, but not to the prohibitions, in the measure. The panel examined, and upheld, Canada's claim that the measure was inconsistent with article III.4 of GATT 1994. That provision prevents WTO members from treating imported products "less favourably" than "like" domestic products. The panel concluded that chrysotile asbestos fibres were "like" polyvinyl alcohol, cellulose and glass fibres ("PCG fibres") and also that cement-based products containing chrysotile asbestos fibres were "like" cement-based products containing PCG fibres. The panel also found that there had been less favourable treatment of imported products and, consequently, concluded that the measure was inconsistent with article III.4 of GATT 1994. However, since chrysotile asbestos was carcinogenic, the panel found that the measure was justified by the exception provided in article XX(*b*) of GATT 1994 as it was "necessary to protect human . . . life or health". On appeal by Canada, the Appellate Body ruled that the French decree prohibiting asbestos and asbestos-containing products had not been shown to be inconsistent with the European Communities' obligations under the WTO agreements. The Appellate Body reversed the panel's finding that the TBT Agreement did not apply to the prohibitions in the measure concerning asbestos and asbestos-containing products and found that the TBT Agreement applied to the measure viewed as an integrated whole. The Appellate Body concluded that it was unable to examine Canada's claims that the measure was inconsistent with the TBT Agreement. The Appellate Body reversed the panel's findings with respect to "like products" under article III.4 of GATT 1994. The Appellate Body ruled, in particular, that the panel had erred in excluding the health risks associated with asbestos from its examination of "likeness". The Appellate Body also reversed the panel's conclusion that the measure was inconsistent with article III.4 of GATT

1994. The Appellate Body itself examined Canada's claims under article III.4 of GATT 1994 and ruled that Canada had not satisfied its burden of proving the existence of "like products" under that provision. Finally, the Appellate Body upheld the panel's conclusion, under article XX(*b*) of GATT 1994, that the French decree was "necessary to protect human . . . life or health". In that appeal, the Appellate Body adopted an additional procedure "for the purposes of this appeal only" to deal with amicus curiae submissions. The Appellate Body received, and refused, 17 applications to file such a submission. The Appellate Body also refused to accept 14 unsolicited submissions from non-governmental organizations that had not been submitted under the additional procedure. At its meeting of 5 April 2001, the DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report.

European Communities—Anti-dumping duties on imports of cotton-type bed linen, complaint by India (WT/DS141). The dispute concerns the imposition of anti-dumping duties by the European Communities on imports of cotton-type bed linen from India. India argued that EC had acted inconsistently with various obligations under articles 2, 3, 5, 6, 12 and 15 of the AD Agreement. Egypt, Japan and the United States reserved their third-party rights. The panel concluded that the EC had not acted inconsistently with its obligations under articles 2.2, 2.2.2, 3.1, 3.4, 3.5, 5.3, 5.4, and 12.2.2 of the AD Agreement. However, the panel did conclude that EC had acted inconsistently with its obligations under articles 2.4.2, 3.4, and 15 of the AD Agreement. On 1 December 2000, EC notified the DSB of its intention to appeal the finding that the EC practice of "zeroing" when establishing the margin of dumping was inconsistent with article 2.4.2 of the AD Agreement. In addition, India appealed the panel's findings regarding article 2.2.2(ii). The Appellate Body upheld the panel's finding that the EC practice of "zeroing" was inconsistent with article 2.4.2 of the AD Agreement. Article 2.4.2 states that "the existence of margins of dumping shall . . . be established on the basis of a comparison of weighted average normal value with the weighted average of prices of *all* comparable export transactions". (emphasis added). By "zeroing" the "*negative* dumping margins", the European Communities did *not* take fully into account the entirety of the prices of *some* export transactions, namely, those export transactions involving models of cotton-type bed linen where "*negative* dumping margins" were found. Thus, EC did *not* establish the existence of dumping for cotton-type bed linen on the basis of a comparison "with the weighted average of prices of *all* comparable export transactions" as required by article 2.4.2. The Appellate Body, however, reversed the panel's findings regarding article 2.2.2(ii) of the AD Agreement. The Appellate Body found that the method for calculating amounts for administrative, selling and general costs and profits set forth in article 2.2.2(ii) *could not* be applied where there was data on administrative, selling and general costs and profits for only *one* other exporter or producer. The Appellate Body also found that, in calculating amounts for profits, sales by other exporters or producers that were not made in the ordinary course of trade *might not* be excluded. In the light of those findings, the Appellate Body concluded that EC had acted inconsistently with article 2.2.2(ii) of the AD Agreement. The DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report, on 12 March 2001.

Argentina—Measures on the export of bovine hides and the import of finished leather, complaint by the European Communities (WT/DS155). The dispute concerns certain measures taken by Argentina affecting the exportation of bovine hides and the importation of goods. EC alleged that a de facto export prohibition on raw

and semi-tanned bovine hides was being implemented, in part through the authorization granted by the Argentine authorities to the Argentine tanning industry to participate in customs control procedures of hides before export, in violation of GATT articles XI.1 (which prohibits export restrictions and measures of equivalent effect) and X.3(*a*) (which requires uniform and impartial administration of laws and regulations), to the extent that personnel of the Argentine Chamber for the tanning industry were authorized to assist Argentine customs authorities in the customs clearance process. EC also claimed that the "additional value-added tax" of 9 per cent on imports of products into Argentina, and the "advance turnover tax" of 3 per cent based on the price of imported goods imposed on operators when importing goods into Argentina, were in violation of article III.2 of GATT 1994 (prohibiting tax discrimination of foreign products which are like domestic products). At its meeting on 26 July 1999, the DSB established a panel. The panel found that Argentina was acting inconsistently with its obligations under GATT 1994 with respect to both the export measure and the import measures at issue in the dispute. However, Argentina prevailed with respect to one of the two EC claims regarding the export measure, namely that the export measure did not constitute a de facto export restriction contrary to article XI.1 of GATT 1994. The panel considered that EC had failed to show that the measure in question was the cause of the low export levels. EC asserted, inter alia, that the Argentine tanners were operating a cartel and thus were able to exert pressure on exporters of hides due to the fact that they could allegedly become aware of the identity of exporters by participating in the customs process. The panel rejected this claim as unproven. The report of the panel was circulated to WTO members on 19 December 2000. It was adopted by the DSB on 16 February 2001.

Republic of Korea—Measures affecting imports of fresh, chilled and frozen beef, complaints by the United States and Australia (WT/DS/161 and 169). The dispute concerns measures by the Government of the Republic of Korea affecting the distribution and sale of imported beef. The Republic of Korea had established in 1990 a "dual retail" system which required imported beef and domestic beef to be sold in separate stores or in the case of large stores or supermarkets, in separate display areas. Also, stores which sold imported beef were required to display a sign reading "Specialized Imported Beef Store". In addition, domestic beef benefited from price support provided by the Government. The United States argued that the measures were in violation of articles II, III, XI and XVII of GATT 1994; articles 3, 4, 6 and 7 of the Agreement on Agriculture; and articles 1 and 3 of the Import Licensing Agreement. At its meeting on 26 July 1999, the DSB also established a panel at the request of Australia. Canada, New Zealand and the United States reserved their third-party rights. At the request of the Republic of Korea, the DSB agreed that, pursuant to DSU article 9.1, the complaint would be examined by the same panel established at the request of the United States. The panel found first that a number of the contested Korean measures benefited, by virtue of a note in the Republic of Korea's Schedule of Concessions, from a transitional period until 1 January 2001, by which date they had to be eliminated or otherwise brought into conformity with the WTO Agreement. The panel found that the Republic of Korea had violated article 3.2 of the Agreement on Agriculture, since its total domestic support for agriculture ("Total AMS") for 1997 and 1998, when price support for domestic beef was included, had exceeded its Total AMS commitments for those years set out in the Schedule. The panel also found that the Republic of Korea had violated article III.4 of GATT 1994, principally by requiring a dual retail system

for the sale of imported and domestic beef. The report of the panel was circulated to WTO members on 31 July 2000. On 11 September 2000, the Republic of Korea notified its intention to appeal certain issues of law and legal interpretations developed by the panel. On 11 December 2000, the report of the Appellate Body was circulated. The Appellate Body upheld the panel's conclusion that the Republic of Korea's domestic support ("AMS") for beef provided in 1997 and 1998 had not been calculated in accordance with article 1(*a*)(ii) and annex 3 of the Agreement on Agriculture, but reversed the panel's findings that its total domestic support for agriculture ("Total AMS") provided in 1997 and 1998 had exceeded its commitments in its Schedule contrary to article 3.2 of the Agreement on Agriculture. The Appellate Body upheld the panel's conclusions that the Republic of Korea's dual retail system was inconsistent with the national treatment obligation in article III.4 of GATT 1994. The Appellate Body upheld the panel's conclusion that the measure could not be justified under article XX(*d*) of GATT 1994. At its meeting of 10 January 2001, the DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report.

United States—Import measures on certain products, complaint by the European Communities (WT/DS165). The dispute concerns certain measures taken by the United States with respect to certain imports from EC in the context of the dispute *EC—Regime for the Importation, Distribution and Sale of Bananas* (WT/DS27). On 2 March 1999, the arbitrators charged with determining the level of suspension of concessions, requested by the United States in response to the failure by EC to implement the recommendations of the DSB in respect of the EC banana regime (DS27), had requested additional data from the parties and informed them that they were unable to issue their report within the 60-day period envisaged by the DSU. On 3 March 1999, the United States imposed increased bonding requirements on certain designated products from the European Communities in order, in its own words, "to preserve [the United States'] right to impose 100 per cent duties as of 3 March, pending the release of the Arbitrators' final decision". This was the "3 March measure" which is the subject of the present dispute. The arbitrators circulated their decision on 9 April 1999. On 19 April 1999, the DSB granted authorization to the United States to suspend concessions or other obligations with respect to the European Communities in the amount determined by the arbitrators. Subsequent to that authorization, the United States imposed 100 per cent duties on *some*, but not all of the designated products that had previously been subject to the increased bonding requirements. That decision is referred to as the "19 April action", and the United States applied it retroactively to 3 March 1999. EC contended that the 3 March 1999 measure was inconsistent with articles 3, 21, 22 and 23 of the DSU and articles I, II, VIII and XI of GATT 1994. EC also alleged nullification and impairment of benefits under GATT 1994, as well as the impediment of the objectives of the DSU and GATT 1994. At its meeting on 16 June 1999, the DSB established a panel. Dominica, Ecuador, India, Jamaica, Japan and Saint Lucia reserved their third-party rights. The panel found that when, on 3 March, the United States had increased bonding requirements to guarantee 100 per cent tariff duties on certain products from EC, it had effectively imposed unilateral retaliatory sanctions, contrary to article 23.1 of the DSU, requiring WTO members not to take unilateral action, but to have recourse to, and abide by, the rules and procedures of the DSU when seeking redress for alleged violations of WTO obligations. The panel found that, by putting into place the 3 March measure prior to the time authorized by the DSB, the United States had made a unilateral determination that the

revised EC bananas regime in respect of its bananas import, sales and distribution regime violated WTO rules, contrary to articles 23.2(*a*) and 21.5, first sentence, of the DSU. The panel further found that the United States had violated its obligations under articles I and II of GATT 1994 (one panellist dissented, considering that the bonding requirements rather violated article XI.1 of GATT 1994). In the light of those conclusions, the 3 March measure constituted a suspension of concessions or other obligations within the meaning of articles 3.7, 22.6 and 23.2(*c*) of the DSU imposed without DSB authorization and during the ongoing article 22.6 arbitration process. In suspending concessions in those circumstances, the United States did not abide by the DSU and thus violated article 23.1 together with articles 3.7, 22.6 and 23.2(*c*) of the DSU. The report of the panel was circulated to WTO members on 17 July 2000. Both the United States and EC appealed certain issues of law and legal interpretations developed by the panel. However, the panel's key conclusion that the United States had acted inconsistently with article 23.1 of the DSU was not appealed. The Appellate Body upheld the panel's findings that the measure at issue in the dispute was the 3 March measure, i.e., the increased bonding requirements, and that the 19 April action, i.e., the imposition of 100 per cent duties on certain designated products, was not within the terms of reference of the panel. The Appellate Body also upheld the panel's finding that the United States had acted inconsistently with article 21.5 of the DSU. The Appellate Body reversed the panel's findings of inconsistency with article 23.2(*a*) of the DSU as well as article II.1(*a*) and (*b*), first sentence, of the DSU. With regard to the panel's statements that the determination of whether measures taken to implement recommendations and rulings of the DSB were WTO-consistent could be made by arbitrators appointed under article 22.6 of the DSU, the Appellate Body found that the panel had erred in addressing the issue in the present case, and held that the panel's statement on the issue was therefore of no legal effect. The report of the Appellate Body was circulated to WTO members on 11 December 2000. At its meeting of 10 January 2001, the DSB adopted the Appellate Body report and the report of the panel, as modified by the Appellate Body report.

United States—Definitive safeguard measures on imports of wheat gluten, complaint by the European Communities (WT/DS166). The dispute concerns definitive safeguard measures imposed by the United States on imports of wheat gluten from EC. EC claimed that the measure was inconsistent with articles 2.1 and 4.2 of the Agreement on Safeguards because the United States "competent authorities", the International Trade Commission (the "USITC"), had not demonstrated that the conditions for imposing a safeguard measure were satisfied. In addition, EC claimed that the United States had not complied with the procedural requirements in articles 8.1, 12.1 and 12.3 of the Agreement on Safeguards. At its meeting on 26 July 1999, the DSB established a panel. Australia and New Zealand reserved their third-party rights. The report of the panel was circulated to WTO members on 31 July 2000. The panel found that: (*a*) the United States had not acted inconsistently with articles 2.1 and 4 of the Safeguards Agreement or with article XIX.1(*a*) of GATT 1994; (*b*) the definitive safeguard measure imposed by the United States on certain imports of wheat gluten based on the United States investigation and determination was inconsistent with articles 2.1 and 4 of the Safeguards Agreement; (*c*) the panel further concluded that the United States had failed to notify immediately the initiation of the investigation under article 12.1(*a*) and the finding of serious injury under article 12.1(*b*) of the Safeguards Agreement; (*d*) in notifying its decision to take the measure only after the measure was implemented, the United States had not made

timely notification under article 12.1(*c*). For the same reason, the United States had violated the obligation of article 12.3 to provide adequate opportunity for prior consultations on the measure; and (*e*) the United States therefore had also violated its obligation under article 8.1 of the Safeguards Agreement to endeavour to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between it and the exporting members which would be affected by such measures, in accordance with article 12.3 of the Safeguards Agreement. On 26 September 2000, the United States notified its decision to appeal to the Appellate Body certain issues of law and legal interpretation covered in the panel report and certain legal interpretations developed by the panel. The Appellate Body circulated its report on 22 December 2000. The Appellate Body upheld the panel's overall conclusion that the United States safeguard measure on imports of wheat gluten was inconsistent with articles 2.1 and 4.2 of the Agreement on Safeguards. However, in reaching that conclusion, the Appellate Body reversed certain of the panel's legal findings, in particular, the panel's interpretation of the legal standard for causation in article 4.2 of the Agreement on Safeguards. The DSB adopted the report of the Appellate Body, and the report of the panel, as modified by the Appellate Body report, on 19 January 2001.

United States—Safeguard measures on import of fresh, chilled or frozen lamb meat, complaints by New Zealand (WT/DS177) and Australia (WT/DS178). The dispute concerns a safeguard measure in the form of a tariff rate quota imposed by the United States in July 1999 on imports of fresh, chilled or frozen lamb meat, primarily from New Zealand and Australia, for a duration of three years. New Zealand and Australia raised a number of claims against the measure under articles 2, 3, 4, 5, 8, 11 and 12 of the Agreement on Safeguards and articles I, II and XIX of GATT 1994. The DSB established a panel on 19 November 1999. The panel found that article XIX.1(*a*) of GATT 1994, read in the context of article 3.1 of the Agreement on Safeguards, required that a member's competent authorities set out, in their findings, "reasoned conclusions" with respect to the existence of unforeseen developments. In examining the report of the United States International Trade Commission (USITC), the panel did not find such "reasoned conclusions". The panel also found that the United States had acted inconsistently with the Agreement on Safeguards because the USITC included, in the domestic lamb meat industry, producers of live lambs, even though those producers did not produce lamb meat. With respect to the "threat" of serious injury, the panel agreed with the Commission's "analytical approach" and that the USITC was correct to focus on the most recent data available from the end of the investigation period. However, the panel found that the data used was not sufficiently representative of the domestic industry, since the USITC had failed to obtain data on producers representing a major proportion of the total domestic production by the domestic industry. The panel also found that, under the Agreement on Safeguards, increased imports must be shown to be a necessary and sufficient cause of serious injury or threat thereof. The panel found that the USITC had not met this standard. The report of the panel was circulated to WTO members on 21 December 2000. On 31 January 2001, the United States notified its intention to appeal certain issues of law covered in the panel report and legal interpretations developed by the panel. The report upheld the panel's overall conclusion that the safeguard measure taken by the United States with respect to imported lamb meat was inconsistent with GATT 1994 and the Agreement on Safeguards. In particular, the Appellate Body upheld the panel's findings that, in taking safeguard action with respect to imported lamb, the United States had: (*a*) failed to demonstrate the existence of "unforeseen

developments"; (*b*) incorrectly defined the relevant "domestic industry"; (*c*) failed to make a determination of the state of the "domestic industry" on the basis of data that was sufficiently representative of that industry; (*d*) inadequately explained its determination of a threat of serious injury to the domestic industry; and (*e*) failed to ensure that injury caused to the domestic industry by factors other than increased imports was not attributed to those imports. The Appellate Body also found, however, that the panel had erred: (*a*) in its application of the standard of review under article 11 of the DSU; and (*b*) in interpreting the causation requirements in the Agreement on Safeguards. The DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report, on 16 May 2001.

United States—Anti-dumping measures on stainless steel plate in coils and stainless sheet and strip, complaint by the Republic of Korea (WT/DS179). The dispute concerns preliminary and final determinations of the United States Department of Commerce on stainless steel plate in coils from the Republic of Korea dated 4 November 1998 and 31 March 1999 respectively, and stainless steel sheet and strip from the Republic of Korea dated 20 January 1999 and 8 June 1999 respectively. The Republic of Korea considered that several errors had been made by the United States in those determinations which resulted in erroneous findings and deficient conclusions as well as the imposition, calculation and collection of anti-dumping duties which were incompatible with the obligation of the United States under the provisions of the AD Agreement and article VI of GATT 1994 and in particular, but not necessarily exclusively, articles 2, 6 and 12 of the AD Agreement. At its meeting on 19 November 1999, the DSB established a panel. The European Communities and Japan reserved their third-party rights. The panel concluded that certain aspects of the calculation of the dumping margin by the United States in the two investigations concerned were not in accordance with the requirements of the AD Agreement. In particular, the panel found that: (*a*) in the case of the investigation on sheet and strip, the United States had made unnecessary currency conversions when determining normal value; (*b*) in both investigations, it had made adjustments to export prices for unpaid sales in a manner not foreseen by the AD Agreement; and (*c*) in both investigations, the United States had calculated the dumping margin through multiple weighted averages in circumstances not provided for in the AD Agreement. The panel, however, also concluded that the United States had acted consistently with its obligations under the AD Agreement when engaging in currency conversions for the purpose of determining normal value in the plate investigation. The panel recommended that the United States be required to bring the two anti-dumping measures at issue into conformity with their obligations under the Anti-Dumping Agreement, but declined the Republic of Korea's request suggesting that the United States revoke such measures. The report of the panel was circulated to WTO members on 22 December 2000. It was adopted by the DSB on 1 February 2001.

United States—Anti-dumping measures on certain hot-rolled steel products from Japan, complaint by Japan (WT/DS184). The dispute, dated 18 November 1999, concerns preliminary and final determinations of the United States Department of Commerce and the United States International Trade Commission (USITC) on the anti-dumping investigation of certain hot-rolled steel products from Japan issued on 25 and 30 November 1998 and 12 February, 28 April and 23 June 1999. Japan considered that those determinations were erroneous and based on deficient procedures under the United States Tariff Act of 1930 and related regulations. The Japanese complaint also concerned certain provisions of the Tariff Act of 1930 and related regulations. Japan claimed violations of articles VI

and X of GATT 1994 and articles 2, 3, 6 (including annex II), 9 and 10 of the AD Agreement. On 24 February 2000, Japan requested the establishment of a panel. At its meeting on 20 March 2000, the DSB established a panel. Brazil, Canada, Chile, EC and the Republic of Korea reserved their third-party rights in the proceedings. In its report, circulated on 28 February 2001, the panel, as a preliminary matter, concluded that certain of Japan's claims were limited to specific determinations in the underlying investigation, and did not encompass the United States "general practice" with respect to certain aspects of the conduct of anti-dumping investigations. The panel found that the United States had acted inconsistently with its obligations under the AD Agreement in the following respects when it imposed definitive anti-dumping duties on imports of certain hot-rolled steel products in June 1999: (*a*) the decision to rely on "facts available" in the determination of the dumping margin for all three Japanese exporters investigated was not m accordance with the requirements of the AD Agreement; (*b*) the exclusion of certain home sales and their replacement with downstream home market sales in the calculation of normal value was not in accordance with the requirements of the AD Agreement; and (*c*) the United States statute governing the calculation of a maximum dumping margin to be applied to imports from uninvestigated producers was (the "all others" dumping margin), on its face, inconsistent with the AD Agreement. However, the panel concluded that the United States had not acted inconsistently with its obligations under the AD Agreement in the following respects: (*a*) issuing a preliminary "critical circumstances" determination; (*b*) the examination and determination of injury and causation; (*c*) the requirement in the United States statute of a "primary focus" on financial performance and market share in the merchant, as opposed to the captive market in the examination of injury. Finally, the panel found that the United States had not acted inconsistently with article X.3 of GATT in conducting its investigation and making its determinations in the underlying investigations. On 25 April 2001, the United States notified its decision to appeal to the Appellate Body certain issues of law covered in the panel report and certain legal interpretations developed by the panel. The Appellate Body circulated its report on 24 July 2001. The Appellate Body upheld the panel's overall conclusion that the imposition by the United States of anti-dumping duties on imports of hot-rolled steel from Japan was inconsistent with the AD Agreement, as well as the panel's conclusion that a provision of the United States Tariff Act of 1930 was also inconsistent with that Agreement and with the WTO Agreement. However, it reversed the panel's finding regarding the inconsistency with article 2.1 of the AD Agreement of the United States methodology for calculating the normal value as regards the using of certain downstream sales made by an investigated exporter's affiliates to dependent purchasers. It found that there was insufficient factual record to allow completion of the analysis of Japan's claim under article 2.4 of the Anti-Dumping Agreement that the United States had not made a fair comparison in its use of downstream sales when calculating normal value. It reversed the panel's finding that the United States had not acted inconsistently with the AD Agreement in its application of the captive production provision in its determination of injury sustained by the United States hot-rolled steel industry. It also reversed the panel's finding that the USITC had demonstrated the existence of a causal relationship, under article 3.5 of the said Agreement, between dumped imports and material injury to that industry, but found that there was insufficient factual record to allow completion of the analysis of Japan's

claim on causation. The DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report, on 23 August 2001.

Argentina—Definitive anti-dumping measures on imports of ceramic floor tiles from Italy, complaint by the European Communities (WT/DS189). The dispute concerns Argentina's definitive anti-dumping measures on imports of ceramic floor tiles from Italy imposed on 12 November 1999. EC claimed that the Argentine investigative authority without justification had disregarded all the information on normal value and on export prices provided by the exporters included in the sample; failed to calculate an individual dumping margin for each of the exporters included in the sample; failed to make due allowance for the differences in physical characteristics between the models exported to Argentina and those sold in Italy; and failed to inform the Italian exporters of the essential facts concerning the existence of dumping which formed the basis for the decision whether to apply definitive measures. EC considered that the anti-dumping measures in question were inconsistent with articles 2.4, 6.8 in conjunction with annex II, 6.9 and 6.10 of the Anti-Dumping Agreement. On 7 November 2000, EC requested the establishment of a panel. At its meeting on 17 November 2000, the DSB established a panel. Japan, Turkey and the United States reserved their third-party rights. The panel found that (*a*) Argentina had acted inconsistently with article 6.8 and annex II to the AD Agreement by disregarding in large part the information provided by the exporter for the determination of the normal value and export price, and this without informing the exporters of the reasons for such a rejection; (*b*) Argentina had acted inconsistently with article 6.10 of the AD Agreement by not determining an individual dumping margin for each sampled exporter; (*c*) Argentina had acted inconsistently with article 2.4 of the AD Agreement by failing to make due allowance for difference in physical characteristics affecting price comparability; and (*d*) Argentina had acted inconsistently with article 6.9 of the AD Agreement by not disclosing to the exporters the essential facts under consideration which formed the basis for the decision whether to apply definitive measures. At its meeting on 5 November 2001, the DSB adopted the panel report.

United States—Transitional safeguard measure on combed cotton yarn from Pakistan, complaint by Pakistan (WT/DS192). The dispute concerns a transitional safeguard measure applied by the United States, as of 17 March 1999, on combed cotton yarn (United States category 301) from Pakistan. In accordance with article 6.10 of the Agreement on Textiles and Clothing (ATC), the United States had notified the Textiles Monitory Body (TMB) on 5 March 1999 that it had decided to unilaterally impose a restraint, after consultations as to whether the situation called for a restraint had failed to produce a mutually satisfactory solution. In April 1999, the TMB examined the United States restraint pursuant to article 6.10 of the ATC and recommended that the United States restraint should be rescinded. On 28 May 1999, in accordance with article 8.10 of the ATC, the United States notified the TMB that it considered itself unable to conform to the recommendations issued by the TMB. Despite a further recommendation of the TMB pursuant to article 8.10 of the ATC that the United States reconsider its position, the United States continued to maintain its unilateral restraint and thus the matter remained unresolved. Pakistan was of the view that the transitional safeguards applied by the United States were inconsistent with the United States obligations under articles 2.4 of the ATC and not justified by article 6 of the ATC. Pakistan considered that the United States restraint did not meet the requirements for transitional safeguards set out in paragraphs 2, 3, 4 and 7 of article 6 of the ATC. At its meeting

on 19 June 2000, the DSB established a panel. India and the European Communities reserved their third-party rights. The panel circulated its report on 31 May 2001. The panel concluded that the transitional safeguard measure (quantitative restriction) imposed by the United States on imports of combed cotton yarn from Pakistan as of 17 March 1999, and extended as of 17 March 2000 for a further year was inconsistent with the provisions of article 6 of the ATC. Specifically, the panel found that: (*a*) inconsistently with its obligations under 6.2, the United States had excluded the production of combed cotton yarn by vertically integrated producers for their own use from the scope of the "domestic industry producing like and/or directly competitive products" with imported combed cotton yarn; (*b*) inconsistently with its obligations under article 6.4, the United States had not examined the effect of imports from Mexico (and possibly other appropriate members) individually; and (*c*) inconsistently with its obligations under articles 6.2 and 6.4, the United States had not demonstrated that the subject imports caused an "actual threat" of serious damage to the domestic industry. With respect to the other claims, the panel found that Pakistan had not established that the measure at issue was inconsistent with the United States obligations under article 6 of the ATC. Specifically, the panel found that: (*a*) Pakistan had not established that the United States determination of serious damage was not justified based on the data used by the United States investigating authority; (*b*) Pakistan had not established that the United States determination of serious damage was not justified regarding the evaluation by the United States investigating authority of establishments that ceased producing combed cotton yarn; (*c*) Pakistan had not established that the United States determinations of serious damage and causation thereof were not justified based upon an inappropriately chosen period of investigation and period of incidence of serious damage and causation thereof. On 9 July 2001, the United States, notified its decision to appeal to the Appellate Body certain issues of law covered in the panel report and certain legal interpretations developed by the panel. The Appellate Body circulated its report to members on 8 October 2001. The Appellate Body upheld the panel's overall conclusion that the transitional safeguard measure taken by the United States with respect to imports of combed cotton yarn ("yarn") from Pakistan was inconsistent with the ATC. In particular, the Appellate Body upheld the panel's findings that, in taking safeguard action with respect to imports of yarn from Pakistan, the United States had: (*a*) failed to define properly the relevant "domestic industry" producing yarn; and (*b*) failed to examine the effect of imports of yarn from other major supplier(s) individually when attributing serious damage to imports from Pakistan. Furthermore, the Appellate Body concluded that the panel should not have considered data which were not in existence at the time when the United States determined that serious damage had been caused to the domestic industry. It declined to rule on the broader issue of whether an importing member must attribute serious damage to all members whose exports contributed to that damage and concluded therefore that the panel's interpretation of this broader issue was of no legal effect. The DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report, on 5 November 2001.

United States—Measures treating export restraints as subsidies, complaint by Canada (WT/DS194). The dispute concerns United States measures that treated a restraint on exports of a product as a subsidy to other products made using or incorporating the restricted product if the domestic price of the restricted product was affected by the restraint. The measures at issue included provisions of the

Statement of Administrative Action accompanying the Uruguay Round Agreements Act and the Explanation of the Final Rules, United States Department of Commerce, Countervailing Duties, Final Rule (25 November 1998) interpreting section 771(5) of the Tariff Act of 1930 (19 U.S.C. § 1677(5)), as amended by the Uruguay Round Agreements Act. Canada considered that these measures were inconsistent with United States obligations under articles 1.1, 10 (as well as articles 11, 17 and 19, as they related to the requirements of article 10) and 32.1 of the SCM Agreement because those measures provided that the United States would impose countervailing duties against practices that were not subsidies within the meaning of article 1.1 of the SCM Agreement. Canada also considered that the United States had failed to ensure that its laws, regulations and administrative procedures were in conformity with its WTO obligations as required by article 32.5 of the SCM Agreement and article XVI.4 of the WTO Agreement. At its meeting on 11 September 2000, the DSB established a panel. Australia, the European Communities and India reserved their third-party rights. The panel concluded that an export restraint as defined in the present dispute could not constitute government-entrusted or government-directed provision of goods in the sense of subparagraph (iv) and hence did not constitute a financial contribution in the sense of article 1.1(*a*) of the SCM Agreement. The panel also stated that section 771(5)(B)(iii) read in the light of the Statement of Administrative Action and the preamble to the United States Countervailing Duties Regulations was not inconsistent with article 1.1 of the SCM Agreement by "requir[ing] the imposition of countervailing duties against practices that are not subsidies within the meaning of article 1.1". With respect to those of Canada's claims not addressed above, the panel concluded that in the light of considerations of judicial economy, it was neither necessary nor appropriate to make findings thereon. The panel therefore made no recommendations with respect to the United States obligations under the SCM and WTO Agreements. The DSB adopted the panel report on 23 August 2001.

Active panels

The following table lists those panels that were still active as of 31 December 2001.

Dispute	*Complainant*	*Panel established*
Chile—Price band system and safeguard measures relating to certain agricultural products (WT/DS207)	Argentina	12 March 2001
Egypt—Definitive anti-dumping measures on steel rebar from Turkey (WT/DS211)	Turkey	20 June 2001
United States—Anti-dumping and countervailing measures on steel plate from India (WT/DS206)	India	24 July 2001
European Communities—Anti-dumping duties on malleable cast iron tube or pipe fittings from Brazil	Brazil	24 July 2001
European Communities—Trade description of sardines (WT/DS231)	Peru	24 July 2001

Dispute	*Complainant*	*Panel established*
United States—Section 129(*c*)(1) of the Uruguay Round Agreements Act (WT/DS221)	Canada	23 August 2001
United States—Definitive safeguard measures on imports of steel wire rod and circular welded carbon quality line pipe (WT/DS214)	European Communities	10 September 2001
United States—Countervailing measures concerning certain products from the European Communities (WT/DS212)	European Communities	10 September 2001
United States—Countervailing duties on certain corrosion-resistant carbon steel flat products from Germany (WT/DS213)	European Communities	10 September 2001
United States—Continued Dumping and Subsidy Offset Act of 2000 (WT/DS217)	Australia, Brazil, Chile, European Communities, India, Indonesia, Japan, Republic of Korea and Thailand	10 September 2001
United States—Continued Dumping and Subsidy Offset Act of 2000 (WT/DS234)	Canada and Mexico	10 September 2001
United States—Preliminary determinations with respect to certain softwood lumber from Canada (WT/DS236)	Canada	5 December 2001

Request for consultations

The following list does not include those disputes where a panel was either requested or established in 2001.

Dispute	*Complainant*	*Date of request*
Chile—Price band system and safeguard measures relating to certain agricultural products (WT/DS220)	Guatemala	5 January 2001
European Communities—Tariff-rate quota on corn gluten feed from the United States (WT/DS223)	United States	25 January 2001
United States—United States Patents Code (WT/DS224)	Brazil	31 January 2001
United States—Anti-dumping duties on seamless pipe from Italy (WT/DS225)	European Communities	5 February 2001

Dispute	*Complainant*	*Date of request*
Chile—Provisional safeguard measure on mixtures of edible oils (WT/DS226)	Argentina	19 February 2001
Brazil—Anti-dumping duties on jute bags from India (WT/DS229)	India	9 April 2001
Chile—Safeguard measures and modification of schedules regarding sugar (WT/DS230)	Colombia	17 April 2001
Mexico—Measures affecting the import of matches (WT/DS232)	Chile	17 May 2001
Argentina—Measures affecting the import of pharmaceutical products (WT/DS233)	India	25 May 2001
Turkey—Certain import procedures for fresh fruits (WT/DS237)	Ecuador	31 August 2001
United States—Anti-dumping duties on silicon metal from Brazil (WT/DS239)	Brazil	17 September 2001
Argentina—Definitive anti-dumping duties on poultry from Brazil (WT/DS241)	Brazil	7 November 2001
European Communities—Generalized System of Preferences (WT/DS242)	Thailand	7 December 2001

Notification of a mutually agreed solution

Dispute	*Complainant*	*Date settlement notified*
Denmark—Measures affecting the enforcement of intellectual property rights	United States	7 June 2001
European Communities—Enforcement of intellectual property rights for motion pictures and television programmes (WT/DS124)	United States	20 March 2001
Greece—Enforcement of intellectual property rights for motion pictures and television programmes (WT/DS125)	United States	20 March 2001
Brazil—Measures affecting patent protection (WT/DS199)	United States	5 July 2001
Romania—Measures on minimum import prices (WT/DS198)	United States	26 September 2001
Belgium—Administration of measures establishing customs duties for rice (WT/DS210)	United States	18 December 2001

Doha Ministerial Conference

At the Fourth Ministerial Conference, held at Doha, Qatar, in November 2001, the Ministerial Conference adopted a declaration which provides the mandate for negotiations on a range of subjects and other work, including issues concerning the implementation of the present agreements.[180] The negotiations include those on agriculture and services, which began in early 2000. A number of other issues have now been added. The Declaration sets 1 January 2005 as the date for completing all but two of the negotiations. Negotiations on the Dispute Settlement Understanding are to end in May 2003; those on a multilateral register of geographical indications for wines and spirits, by the next Ministerial Conference in 2003. Progress is to be reviewed at the Fifth Ministerial Conference in 2003, to be held in Mexico.

In Doha, the discussion on the implementation of the current WTO agreements focused on the problems of developing countries. First, Ministers agreed to adopt approximately 50 decisions clarifying the obligations of developing country member Governments with respect to issues including agriculture, subsidies, textiles and clothing, technical barriers to trade, trade-related investment measures, and rules of origin. Second, for many other implementation issues of concern to developing countries, the Ministers agreed on a future work programme for addressing these matters.

The Ministers established a two-track approach. Those issues for which there was an agreed negotiating mandate in the Declaration would be dealt with under the terms of that mandate. Those implementation issues where there was no mandate to negotiate would be taken up as a matter of priority by relevant WTO councils and committees. Those bodies were to report on their progress to the Trade Negotiations Committee by the end of 2002 for appropriate action.

The Doha Declaration emphasizes the importance of implementing and interpreting the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS Agreement) in a way that supports public health, by promoting both access to existing medicines and the creation of new medicines. It refers to their separate declaration on this subject.

This separate declaration affirms Governments' right to use the Agreement's flexibilities in order to defend their right to protect public health. The separate declaration clarifies some of the forms of flexibility available, in particular compulsory licensing and parallel importing. The TRIPS Council has to find a solution to the problems countries may face in making use of compulsory licensing if they have too little or no pharmaceutical manufacturing capacity, reporting to the General Council on this by the end of 2002. The declaration also extends the deadline for least developed countries to apply provisions on pharmaceutical patents until 1 January 2016.

Finally, the Ministerial Conference decided to waive the preferential tariff treatment that the EC accorded to products originating in African, Caribbean and Pacific (ACP) countries through the ACP-EC Partnership Agreement (WT/L/436).

Observer status

At the Council meeting on 8 and 9 February 2001, following a request of Sao Tome and Principe for observer status, the Council adopted a decision (WT/GC/M/63) to accept the request. (No international intergovernmental organization requested or was given observer status in 2001. However, at the Doha Ministe-

rial Conference, about 57 intergovernmental organizations and around 400 non-governmental organizations were given observer status.)

(*c*) Legal activities in the councils and committees

(i) *General Council*

The General Council has held six meetings and four special sessions on implementation since the period covered by the report. The minutes of those meetings and special sessions are contained in documents WT/GC/M/63-64, 65 and Corr.1 and 2 and 66-72.

Committee on Balance-of-Payments Restrictions

The General Council adopted the reports of the Committee on Balance-of-Payments Restrictions concerning its consultations with Bangladesh (WT/BOP/R/57), which had focused on Bangladesh's plan to phase out the measures notified under article XVIII.B that the Committee had requested from Bangladesh and had been prepared with WTO technical assistance (WT/BOP/R/56-58).

Procedure for introduction of harmonized system 2002 changes to schedules of concessions

The General Council adopted a draft decision on a procedure for the introduction of harmonized system (HS) 2002 changes to schedules of concessions (G/C/W/271) which had been approved by the Council for Trade in Goods on 5 July 2001 and forwarded to the General Council for consideration and adoption (WT/L/407). The adopted procedure aims to further facilitate and simplify the introduction of HS 2002 changes to the WTO Schedule.

Detailed terms of reference for the inter-agency panel on financing normal levels of commercial imports of basic foodstuffs within the framework of the Marrakesh Decision on net-food-importing developing countries

The Committee on Agriculture approved the terms of reference established by an inter-agency panel of financial and commodity experts to explore ways and means for improving access by least developed and net-food-importing developing countries to multilateral programmes and facilities (G/AG/12). The terms of reference draw on the Marrakesh Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net-Food-Importing Developing Countries.

Rectification of technical error in the Agreement on Subsidies and Countervailing Measures

On 15 December 2000, the General Council decided to add Honduras to annex VII(*b*) to the SCM Agreement via a technical correction (WT/L/384). By the decision, Honduras was added to the list of developing countries which are WTO members subject to the provisions applicable to other developing country members according to article 27 of the SCM Agreement, when gross national product (GNP) per capita has reached US$ 1,000 per annum. On 20 January 2001, the final correction was circulated (WT/LET/371).

(ii) *Council for Trade in Goods*

During 2001, the Council for Trade in Goods met six times in formal session: 14 March, 18 April, 5 and 17 July, 27 and 31 July, 5 and 17 October, and 2 and 14 November 2001 (G/C/M/47-50, 53-55 and 57). The Council also met twice, on 27 September and 26 October, to conduct the major review of the implementation of the Agreement on Textiles and Clothing in the second stage of the integration process (G/C/M/52 and 56).

Legal activities of the committees

Committee on Agriculture

During 2001, the Committee on Agriculture held four regular meetings: on 29-30 March, 28-29 June, 27 September and 6 December 2001 (G/AG/R/26-29). In February 2000, the General Council had launched the negotiations to continue the process of reform of trade in agriculture which began in 1995. At the end of the first phase, the Committee adopted a programme for the second phase of the negotiations up to early 2002. The text on agriculture from the Doha Ministerial Declaration provided guidance for the further work, including a benchmark to establish modalities for the further commitments. Comprehensive draft schedules based on those modalities are to be submitted by participants by the opening of the Fifth Ministerial Conference, and the negotiations on agriculture are to be concluded as part and on the date of conclusion of the negotiating agenda as a whole (1 January 2005).

Committee on Sanitary and Phytosanitary Measures

The Committee held three regular meetings in 2001: on 14 and 15 March, 10 and 11 July and 31 October and 1 November (G/SPS/R/21-23). At each meeting, the Committee discussed specific trade concerns identified by members. The Committee also focused specifically on difficulties faced by developing countries, in particular regarding recognition of equivalence and the need for technical assistance. The Committee adopted a decision providing guidance on the recognition of the equivalence of sanitary measures providing a similar level of health protection (G/SPS/19).

Committee on Technical Barriers to Trade

During 2001, the Committee held three meetings: on 30 March, 29 June and 9 October (G/TBT/M/23-25). The Committee carried out its sixth annual review of the implementation and operation of the Agreement under article 15.3 as well as its sixth annual review of the Code of Good Practice for the Preparation, Adoption and Application of Standards (annex 3 of the Agreement) based on background documents G/TBT/10, WTO TBT Standards Code Directory (sixth edition), G/TBT/CS/1/Add.5 and G/TBT/CS/2/Rev.7.

Committee on Customs Valuation

During the period under review, the Committee held six formal meetings: on 9 March (G/VAL/M/19), 11 April (G/VAL/M/20), 24 July (G/VAL/M/21), 2 October (G/VAL/M/22), 24 October (G/VAL/M/23) and 21 November 2001 (G/VAL/M/24). The Committee adopted a decision granting a reservation under annex III.2 for Jamaica (G/VAL/40). The Committee also adopted the proposal by the European Communities for a work programme on technical assistance for

capacity-building as regards the implementation and administration of the WTO Agreement on Customs Valuation (G/VAL/W/82/Rev.1). The work programme was developed to improve customs valuation in developing countries and to promote cooperation between donors of technical assistance to developing countries. The work programme takes into account the new strategy for technical assistance currently being defined by the WTO Committee on Trade and Development (WT/COMTD/W/78).

(iii) *Council for Trade in Services*

In 2001, the Council for Trade in Services held five formal meetings (S/C/M/52-56). The Council has also held three special meetings devoted to the review of the Annex on Air Transport Services (S/C/M/50).

Revision of guidelines for the scheduling of specific commitments

The Council addressed the draft Revised Guidelines for the Scheduling of Specific Commitments (S/CSC/W/30) and a draft decision by the Council to adopt the revised guidelines (S/C/W/190). Upon the recommendation of the Committee on Specific Commitments, the Council adopted the text agreed by the Committee, which reflected the revision of the Guidelines for the Scheduling of Specific Commitments under the General Agreement on Trade Services (GATS) (S/L/92). The guidelines explain how specific commitments should be set out in schedules in order to assist in the preparation of offers, requests and national schedules of specific commitments.

Negotiations under article X of GATS on emergency safeguards

The Council adopted a proposal by the Chairperson of the Working Party on GATS Rules (S/L/90) to extend the deadline for the negotiations under article X of GATS on emergency safeguard measures (S/C/W/184). The new deadline was 15 March 2002 and the final date for the entry into effect of the results of the negotiations should be no later than the date of entry into force of the results of the services round.

(iv) *Council for Trade-related Aspects of Intellectual Property Rights*

In 2001, the Council for TRIPS held four formal meetings: from 2 to 5 April, 18 to 22 June, on 19 and 20 September and 27 and 28 November 2001 (IP/C/M/30-34).

Implementation of article 66.2

During the period under review, the Council continued to discuss the implementation of article 66.2, under which developed country members are required to provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least developed country members. The Council also agreed to invite UNCTAD to update it on the ongoing work in that organization relevant to the implementation of article 66.2, in particular as a result of the UNCTAD Expert Meeting on International Arrangements for Transfer of Technology in June 2001.

NOTES

[1] For detailed information, see *The United Nations Disarmament Yearbook*, vol. 26: 2001 (United Nations publication, Sales No. E.02.IX.1).

[2] Treaty on the Limitation of Anti-Ballistic Missile Systems. United Nations, *Treaty Series*, vol. 944, p. 13.

[3] A/50/1027, annex.

[4] IAEA document GOV/INF/821-GC(41)/INF/12.

[5] United Nations, *Treaty Series*, vol. 729, p. 159.

[6] 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.

[7] 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.

[8] Successor of the United Nations Special Commission (UNSCOM).

[9] S/2001/560.

[10] S/2001/833, S/2001/1126.

[11] A/CONF.192/2.

[12] General Assembly resolution 55/255, annex.

[13] General Assembly resolution 55/25, annex I.

[14] Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects. United Nations, *Treaty Series*, vol. 1342, p. 137.

[15] Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II as amended on 3 May 1996), CCW/CONF.I/16 (Part I), annex B.

[16] Protocol on Blinding Laser Weapons (Protocol IV), ibid., annex A.

[17] United Nations, *Treaty Series*, vol. 2056, p. 211.

[18] United Nations, *Treaty Series*, vol. 2029, p. 55.

[19] Ibid., vol. 1833, p. 3.

[20] See UNEP press release, "UNEP finalizes field mission to six depleted uranium sites in Serbia and Montenegro", Belgrade, 4 November 2001.

[21] For the report of the Subcommittee, see A/AC.105/763.

[22] The treaties include: 1967 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); 1968 Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (resolution 2345 (XXII), annex); 1972 Convention on International Liability for Damage Caused by Space Objects (resolution 2777 (XXVI), annex); 1975 Convention Registration of Objects Launched into Outer Space (resolution 3235 (XXIX), annex); and 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (resolution 34/68, annex).

[23] See A/AC.105/C.2/L.223 and A/AC.105/C.2/2001/CRP.9.

[24] A/AC.105/635 and Add.1-5 and A/AC.105/C.2/L.204.

[25] See A/AC.105/763, annex II.

[26] For the report of the Committee, see *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 20* and corrigendum (A/56/20 and Corr.1).

[27] General Assembly resolution 51/122, annex.

[28] Agreement among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America concerning Cooperation in the Civil International Space Station.

[29] A/55/1024 and Corr.1.

[30] For the report of the session, see *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 25* (A/56/25).

[31] A/56/189.

[32] United Nations, *Treaty Series*, vol. 1954, p. 3.

[33] A/56/175.

[34] United Nations, *Treaty Series*, vol. 1760, p. 79.

[35] See A/56/126.

[36] See UNEP/CBD/ExCOP/1/3 and Corr.1, part two, annex.

[37] See General Assembly resolution 55/2.

[38] FCCC/CP/1997/7/Add.1, decision 1/CP.3.

[39] United Nations, *Treaty Series*, vol. 1771, p. 107.

[40] See FCCC/CP/2001/13/Add.1.

[41] FCCC/CP/2001/5, decision 5/CP.6.

[42] FCCC/CP/1998/16/Add.1, decision 1/CP.4.

[43] A/56/129.

[44] A/56/561.

[45] A/56/115-E/2001/92 and Corr.1.

[46] See E/2001/61, annex.

[47] A/56/558.

[48] A/56/560.

[49] A/56/403 and Add.1.

[50] For the texts of the Convention, of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and of the Protocol against the Smuggling of Migrants by Land, Sea and Air, see General Assembly resolution 55/25, annexes I, II and III respectively.

[51] The treaties include: 1961 Single Convention on Narcotic Drugs (United Nations, *Treaty Series*, vol. 520, p. 151); 1971 Convention on Psychotropic Substances (ibid., vol. 1019, p. 175); 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961 (ibid., vol. 976, p. 3); 1975 Single Convention on Narcotic Drugs, 1961, as amended by the Protocol of 25 March 1972 amending the Single Convention on Narcotic Drugs, 1961 (ibid., p. 105); and 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (E/CONF.82/15 and Corr.2; issued as a United Nations publication (Sales No. E.91.XI.6)).

[52] 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.

[53] See General Assembly resolution S-17/2, annex.

[54] United Nations, *Treaty Series*, vol. 993, p. 3.

[55] Ibid., vol. 999, p. 171.

[56] Ibid.

[57] General Assembly resolution 44/128, annex.

[58] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 40*; and ibid., *Fifty-sixth Session, Supplement No. 40*.

[59] A/56/583/Add.5.

[60] United Nations, *Treaty Series*, vol. 660, p. 195.

[61] See CERD/sp/45, annex.

[62] United Nations, *Treaty Series*, vol. 1249, p. 13.

[63] See CEDAW/SP/1995/2.

[64] General Assembly resolution 54/4, annex.

[65] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 38* (A/56/38).

[66] A/56/328.

[67] United Nations, *Treaty Series*, vol. 1465, p. 85.

[68] CAT/sp/1992/L.1.

[69] General Assembly resolution 55/89, annex.

[70] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 44* (A/56/44).

[71] See A/56/156.

[72] United Nations, *Treaty Series*, vol. 1577, p. 3.

[73] CRC/SP/1995/L.2/Rev.1.

[74] General Assembly resolution 54/263, annex I.

[75] Ibid., annex II.

[76] A/S-27/3.

[77] A/56/203.

[78] A/56/342-S/2001/852.

[79] See A/56/453.

[80] See General Assembly resolution 45/158.

[81] A/56/179.

[82] A/56/329.

[83] E/CN.4/2001/83 and Add.1.

[84] E/CN.4/2001/73 and Add.1 and 2.

[85] General Assembly resolution 217 A (III).

[86] See *Official Records of the Economic and Social Council, 2001, Supplement No. 3* (E/2001/23), chap. II, sect. A.

[87] A/56/344.

[88] A/56/190.

[89] United Nations, *Treaty Series*, vol. 189, p. 137.

[90] Ibid., vol. 606, p. 267.

[91] Ibid., vol. 360, p. 117.

[92] Ibid., vol. 989, p. 175.

[93] A/56/333 and Corr.1.

[94] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 12A* (A/56/12/Add.1).

[95] See A/56/352-S/2001/865.

[96] See A/56/351-S/2001/863 and Corr.1 and 2.

[97] See A/56/413.

[98] "United Nations, *Treaty Series*, vol. 249, p. 215.

[99] United Nations, *Treaty Series*, vol. 1833, p. 3.

[100] General Assembly resolution 48/263, annex.

[101] A/CONF.164/37.

[102] SPLOS/25.

[103] International Seabed Authority document ISBA/4/A/8, annex.

[104] A/56/58 and Add.1.

[105] For the composition of the Court, see *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 4* (A/56/4), chap. II, sect. A.

[106] For detailed information, see *I.C.J. Yearbook 2000-2001*, No. 55, and *I.C.J. Yearbook 2001-2002*, No. 56.

[107] The case was originally filed as: *Armed Activities on the Territory of the Congo* (*Democratic Republic of the Congo* v. *Burundi*) (*Democratic Republic of the Congo* v. *Uganda*) *(Democratic Republic of the Congo* v. *Rwanda)*.

[108] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 4* (A/56/4).

[109] For the membership of the International Law Commission, see ibid., *Supplement No. 10* and corrigendum (A/56/10 and Corr.1), chap. I, sect. A.

[110] For detailed information, see *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* and corrigendum (A/56/10 and Corr.1).

[111] A/CN.4/515 and Add.1-3.

[112] A/CN.4/517 and Add.1.

[113] A/CN.4/L.601, Corr.1 and 2.

[114] A/CN.4/508/Add.3 and 4.

[115] A/CN.4/518 and Add.1-3.

[116] The text of the draft guidelines on reservations to treaties provisionally adopted so far by the Commission is contained in *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10), chap. VI, sect. C.

[117] A/CN.4/506/Add.1.

[118] A/CN.4/514 and Corr.1.

[119] A/CN.4/519.

[120] For the membership of UNCITRAL, see *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17* (A/56/17), chap. II, sect. B.

[121] A/CN.9/495.

[122] A/CN.9/485 and A/CN.9/487.

[123] A/CN.9/497.

[124] A/CN.9/501 and Corr.1.

[125] United Nations publication, Sales No. E.01.V.4.

[126] For the text of the Convention, see chap. IV.A.4.

[127] A/56/484.

[128] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 26* (A/56/26).

[129] *Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June-17 July 1998*, vol. I: *Final Documents* (United Nations publication, Sales No. E.02.I.5), sect. A.

[130] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 33* (A/56/33).

[131] S/2000/319; see *Resolutions and Decisions of the Security Council, 2000*.

[132] A/53/312.

[133] A/56/160 and Corr.1 and Add.1.

[134] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 37* (A/56/37).

[135] A/C.6/56/L.9.

[136] General Assembly resolution 52/164, annex.

[137] General Assembly resolution 54/109, annex.

[138] For the text of the Convention, see United Nations, *Treaty Series*, vol. 2051, p. 363.

[139] A/55/637.

[140] A/55/1024 and Corr.1, sect. III.F.

[141] See *Official Records of the Economic and Social Council, 2001, Supplement No. 3* (E/2001/23), chap. II, sect. A.

[142] UNESCO, *Records of the General Conference, Thirty-first Session*, vol. 1, *Resolutions*, resolution 22.

[143] For detailed information, see the report of the Secretary-General, A/56/615. See also the report of the Executive Director of UNITAR, which covers the period 1 July 2000 to 30 June 2002, *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 14* (A/57/14).

[144] ILO, *Official Bulletin*, vol. LXXXIV, 2001, Series A. No. 2. Information on the preparatory work for the adoption of these instruments is given in order to facilitate reference work. These instruments have been adopted using the *double discussion* procedure. *First discussion*: ILC, 88th session, Geneva, 2000, reports VI (1) and (2); ibid., *Record of Proceedings*,

No. 24; *Second discussion*: ILC, 89th session, Geneva, 2001, report IV (1) and reports IV (2A and 2B); ibid., *Record of Proceedings*, Nos. 15, 15A and 15B.

[145] ILC, 89th session, Geneva, 2001, *Record of Proceedings*, No. 19 (Part Three).

[146] The report has been published as report III (Part 1) to the 90th session of the Conference (2002) and comprises two volumes: vol. 1A, *General Report and Observations concerning particular countries* (report III (Part 1A)) and vol. 1B, *Dock Work: Social Repercussions of New Methods of Cargo Handling*, General Survey of the reports concerning the Dock Work Convention (No. 137) and Recommendation (No. 145) 1973 (report III (Part 1B)).

[147] GB.282/15/1.

[148] GB.282/15/2.

[149] GB.282/15/3 and GB.277/18/4.

[150] GB.282/15/6.

[151] ILO, *Official Bulletin*, vol. LXXXIV, 2001, Series B, No. 1.

[152] Ibid., No. 2.

[153] Ibid., No. 3.

[154] GB.280/WP/SDG/1 and 2 and Corr., GB.280/17.

[155] GB.282/WP/SDG/1-3 and Add.1, GB.282/12.

[156] GB.280/LILS/WP/PRS/1/1-3, GB.280/LILS/WP/PRS/2, GB.277/LILS/WP/PRS/2/2 and Corr., GB.280/LILS/WP/PRS/3, GB.280/LILS/5, GB.280/12/2.

[157] GB.282/LILS/WP/PRS/1-6, GB.282/8/2.

[158] LEG 83/14.

[159] For the text of the treaties, see chap IV.B of this volume.

[160] INFCIRC/274/Rev.1.

[161] INFCIRC/335.

[162] INFCIRC/336.

[163] INFCIRC/500.

[164] INFCIRC/500/Add.3.

[165] INFCIRC/402.

[166] INFCIRC/449.

[167] INFCIRC/546.

[168] INFCIRC/566.

[169] INFCIRC/567.

[170] INFCIRC/377.

[171] INFCIRC/167/Add.18.

[172] INFCIRC/582.

[173] INFCIRC/599.

[174] INFCIRC/301/Add.1.

[175] INFCIRC/231/Add.1.

[176] INFCIRC/434/Add.1.

[177] INFCIRC/316/Add.1.

[178] INFCIRC/273/Add.1.

[179] INFCIRC/295/Add.1.

[180] WT/MIN(01)/DEC/1. See also United Nations document A/C.2/56/7, annex.