

Extract from:

UNITED NATIONS JURIDICAL YEARBOOK

2005

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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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

A. GENERAL REVIEW OF THE LEGAL ACTIVITIES OF THE UNITED NATIONS

1. Membership of the United Nations

As at 31 December 2005, the number of Member States remained at 191.

2. The World Summit

From 14 to 16 September 2005, the High-level plenary meeting of the sixtieth session of the General Assembly, the World Summit, was held in New York and brought together more than 170 Heads of States and Governments. This event constituted the largest gathering of world leaders in history, and as such, it represented an opportunity to take landmark decisions in the areas of development, security, human rights and the reform of the United Nations. The selection of items to be discussed during the Summit was based on a set of proposals outlined by the Secretary-General in his report entitled “In larger freedom: towards development, security and human rights for all”,¹ which was a follow-up to the outcome of the Millennium Summit.

The report of the Secretary-General and the set of proposals it contained were based on the report of the High-level Panel on Threats, Challenges and Change entitled “A more secure world: our shared responsibility”,² which detailed 101 recommendations made by the Panel on changes that could enhance the capacity and the efficiency of the United Nations to deal with new and future threats. The threats identified by the Panel were numerous, including economic and social, inter-State conflicts, internal conflicts, including civil war, genocide and large-scale atrocities, nuclear, radiological, chemical and biological weapons, terrorism, and organized crime. The Panel also made proposals for reforming the internal structure and the principal organs of the United Nations.

The Heads of State and Government who gathered at the 2005 World Summit adopted an outcome document that included a significant number of the High-level Panel recommendations, which had also been endorsed by the Secretary-General in his report. The recommendations and decisions contained in this 2005 World Summit Outcome were

¹ A/59/2005 and Add.1-3.

² A/59/565 and Corr.1.

adopted by General Assembly resolution 60/1 of 16 September 2005. Some of the recommendations and decisions are highlighted below.

(a) Values and principles

The Heads of State and Government reaffirmed that their common values and principles, including freedom, equality, solidarity, tolerance, respect for all human rights, respect for nature and shared responsibility, were essential to international relations. They also acknowledged that good governance and the rule of law at the national and international levels were essential for sustained economic growth, sustainable development and the eradication of poverty and hunger. Furthermore, they pledged to enhance the efficiency, accountability and credibility of the United Nations system and, in this regard, they affirmed their resolve to create a more peaceful, prosperous and democratic world. They also decided to undertake concrete measures to continue finding ways to implement the outcome of the Millennium Summit, so as to provide multilateral solutions to problems of development, peace and collective security, human rights and the rule of law, as well as to strengthen the United Nations.

(b) Development

It was reaffirmed in the World Summit Outcome that good governance was essential for sustainable development and that sound economic policies, solid democratic institutions responsive to the needs of the people, and improved infrastructures were the basis for sustained economic growth, poverty eradication and employment creation. It was further reaffirmed that freedom, peace and security, domestic stability, respect for human rights, including the right to development, the rule of law, gender equality and market-oriented policies, as well as an overall commitment to just and democratic societies, were also essential and mutually reinforcing.

(c) Peace and collective security

(i) *Establishment of a counter-terrorism strategy*

The Heads of State and Government welcomed the Secretary-General's identification of elements of a counter-terrorism strategy³ and stated that the General Assembly should further develop the elements with a view to adopting and implementing a strategy to promote comprehensive, coordinated and consistent responses to counter terrorism, which would take into account the conditions conducive to the spread of terrorism. They also stressed the need to make every effort to reach an agreement on and conclude a comprehensive convention on international terrorism during the sixtieth session of the General Assembly and acknowledged that the question of convening a high-level conference under the auspices of the United Nations to formulate an international response to terrorism in all its forms and manifestations could be considered. The Heads of State and Government further recognized that international cooperation to fight terrorism must be conducted in

³ A/59/2005, paras. 87–96 and annex I, chapter II.

conformity with international law and that States must ensure that any measures taken to combat terrorism comply with their obligations under international law, in particular human rights law, refugee law and international humanitarian law.

In its report, the High-level Panel had, *inter alia*, recommended that the General Assembly adopt a definition of terrorism and proposed certain elements to be included therein.⁴ The Secretary-General fully endorsed this recommendation in his report and stated that it would make “clear that, in addition to actions already proscribed by existing conventions, any action constitutes terrorism if it is intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a Government or an international organization to do or abstain from doing any act”⁵. He strongly urged world leaders to unite behind the proposal by the Panel. The question of a definition of terrorism was not addressed in the World Summit Outcome.

(ii) *Establishment of a Peacebuilding Commission*⁶

The Heads of State and Government emphasized the need for a coordinated, coherent and integrated approach to post-conflict peacebuilding and reconciliation with a view to achieving sustainable peace. In this regard, they recognized the need for a dedicated institutional mechanism to address the special needs of countries emerging from conflict towards recovery, reintegration and reconstruction, and to assist them in laying the foundation for sustainable development. Therefore, they decided to establish a Peacebuilding Commission as an intergovernmental advisory body, which would have the objective of bringing together all relevant actors to marshal resources, to advise on, and to propose integrated strategies for post-conflict peacebuilding and recovery. The Commission would focus attention on the reconstruction and institution-building efforts necessary for recovery from conflict and support the development of integrated strategies in order to lay the foundation for sustainable development. Furthermore, the Peacebuilding Commission would provide recommendations and information to improve the coordination of all relevant actors within and outside the United Nations, develop best practices, help ensure predictable financing for early recovery activities and extend the period of attention by the international community to post-conflict recovery. In doing so, the Commission would act in all matters on the basis of consensus of its members.

Moreover, the Commission would meet in various configurations, depending on the country under consideration. The following representatives would be included: the country concerned, the other countries from the region that are engaged in the post-conflict process, the countries involved in relief efforts, the relevant regional organizations, the major financial, troop and civilian police contributors, the senior United Nations representatives in the field, and the relevant regional and international institutions.

⁴ A/59/565 and Corr. 1, paras. 163–164.

⁵ A/59/2005, para. 91.

⁶ See also section 3 (c) of the present chapter, dealing with “Other peacekeeping matters”.

(iii) *Sanctions*

The Heads of State and Government stated in the World Summit Outcome that sanctions should be implemented and monitored effectively with clear benchmarks, be periodically reviewed and remain for as limited a period as necessary to achieve their objectives. They should be terminated once the said objectives have been achieved. They called upon the Security Council to improve its monitoring of the implementation and effects of sanctions in order to ensure that they are implemented in an accountable manner, to review regularly the results of such monitoring and to develop a mechanism to address special economic problems arising from their application. Finally, the Council was also called upon to ensure that fair and clear procedures exist for placing and removing individuals and entities on sanctions lists, as well as for granting humanitarian exceptions.

(d) Human rights and the rule of law

(i) *Human rights*

The Heads of State and Government recognized that all human rights, the rule of law and democracy were interlinked and mutually reinforcing, and that they belonged to the universal and indivisible core values and principles of the United Nations. They also resolved to strengthen the United Nations human rights machinery with the aim of ensuring effective enjoyment by all of all human rights, including the right to development. Therefore, they decided to reinforce the Office of the United Nations High Commissioner for Human Rights, including doubling its budget over the next five years, so as to enable it to effectively carry out its mandate of responding to the broad range of human rights challenges, particularly in the areas of technical assistance and capacity-building.

Furthermore, they reaffirmed their commitment to present for adoption a final draft United Nations declaration on the human rights of the world's indigenous peoples, as well as the need to finalize a comprehensive draft convention on the rights of persons with disabilities. They also stressed the need to include gender and child-protection perspectives in the human rights agenda.

(ii) *Establishment of a Human Rights Council*

In the World Summit Outcome, the Heads of State and Government stated their commitment to further strengthening the United Nations human rights machinery by creating a Human Rights Council that would replace the Commission on Human Rights. This Council would be responsible for promoting universal respect for the protection of human rights and fundamental freedoms for all. The Council would also address situations of violations of human rights, including gross and systematic violations, make recommendations thereon, and promote the effective coordination and mainstreaming of human rights within the United Nations system. Details regarding its mandate, size, composition, working methods and procedure were to be established later, following open, transparent and inclusive negotiations on the subject.

(iii) *Rule of law*

The Heads of State and Government recognized the need for the universal adherence to and implementation of the rule of law at both national and international levels. They supported the idea of establishing a rule of law assistance unit within the Secretariat, which would strengthen United Nations activities to promote the rule of law, including through technical assistance and capacity-building activities.

(iv) *Democracy*

The Heads of State and Government reaffirmed that democracy was a universal value based on the freely expressed will of people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. In this regard, they welcomed the establishment of a Democracy Fund at the United Nations.

(v) *Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity*

The Heads of State and Government stated that each individual State had the responsibility to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity. It was also stressed that the responsibility to protect comprised the prevention of such crimes, including the incitement thereof. The international community, through the United Nations, had the responsibility to use appropriate diplomatic, humanitarian and other peaceful means to help protect populations from those crimes, and would be prepared to take collective action through the Security Council should those peaceful means be insufficient and in cases where the State concerned failed to offer adequate protection. The need for the General Assembly to continue consideration of the responsibility to protect populations from such crimes was also stressed.

(e) Strengthening the United Nations

(i) *General Assembly*

The central position of the General Assembly as the chief deliberative, policymaking and representative organ of the United Nations was reaffirmed, as well as the role of the Assembly in the process of standard-setting and the codification of international law.

(ii) *Security Council*

The Heads of State and Government reaffirmed the primary responsibility of the Security Council for the maintenance of international peace and security and supported the early reform of the Council to make it more broadly representative, efficient and transparent. They committed themselves to continuing their efforts to reach a decision to that end and requested the General Assembly to review the reform progress by the end of 2005. They further recommended that the Council adapt its working measures to ensure a greater involvement of States not members of the Council in its work.

(iii) *Secretariat and management reform*

The need for an efficient, effective and accountable Secretariat of the United Nations, whose staff should act in accordance with Article 100 of the Charter, in a culture of organizational accountability, transparency and integrity, was recognized in the World Summit Outcome. Consequently, the Secretary-General's efforts to ensure ethical conduct, more extensive financial disclosure for United Nations officials and enhanced protection for those who reveal wrongdoing within the Organization were welcomed. The Secretary-General was urged to scrupulously apply the existing standards of conduct and to develop a system-wide code of ethics for all United Nations personnel. In this regard, the Secretary-General was requested to submit to the General Assembly at its sixtieth session details on the ethics office he intended to create.⁷ The urgent need to substantially improve the United Nations oversight and management processes was also recognized and, in this regard, the importance of operational independence of the Office of Internal Oversight Services was emphasized.

Support was expressed for efforts undertaken with regard to the implementation of the Secretary-General's policy of zero tolerance regarding sexual exploitation and abuse by United Nations personnel. In this context, the Secretary-General was encouraged to submit proposals to the General Assembly for a comprehensive approach to victims' assistance by 31 December 2005.

Finally, the Heads of State and Government condemned attacks against personnel engaged in United Nations activities and stressed the need to conclude, during the sixtieth session of the General Assembly, negotiations on a protocol expanding the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel.⁸

(iv) *Pacific settlement of disputes*

The obligation for States to settle their disputes by peaceful means in accordance with Chapter VI of the Charter of the United Nations was emphasized, including by using, when appropriate, the International Court of Justice. It was further emphasized that States should act in accordance with the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.⁹ The important role of the good offices of the Secretary-General was recognized and support was expressed for efforts undertaken to strengthen his capacity in this area.

⁷ See Secretary-General's bulletin ST/SGB/2005/22 "Ethics Office—establishment and terms of reference".

⁸ United Nations, *Treaty Series*, vol. 2051, p. 363. For a discussion on the negotiations of the Optional Protocol, see section 17 of this chapter regarding "Legal questions dealt with by the Sixth Committee and other related subsidiary bodies of the General Assembly".

⁹ General Assembly resolution 2625 (XXV) of 24 October 1970, annex.

(v) *Charter of the United Nations*

Regarding the use of force, the Heads of State and Government reaffirmed that the relevant provisions of the Charter were sufficient to address the full range of threats to international peace and security.

It was decided that, in view of the fact that the Trusteeship Council no longer met and had no remaining functions, Chapter XIII of the Charter and references to the Council in Chapter XII should be deleted.

Furthermore, taking into account resolution 50/52 adopted by the General Assembly on 11 December 1995, and recalling the related discussions on the subject in the Assembly, it was decided that references to “enemy States” in Articles 53, 77 and 107 of the Charter should be deleted.

Finally, the Security Council was requested to consider the composition, mandate and working methods of the Military Staff Committee.

3. Peace and security

(a) Peacekeeping missions and operations

(i) *Peacekeeping missions and operations established in 2005*

The Sudan

On 24 March 2005, the Security Council adopted resolution 1590 (2005) and decided to establish the United Nations Mission in the Sudan (UNMIS) for an initial period of six months. The Council requested the Secretary-General to transfer all functions performed by the special political mission, the United Nations Advance Mission in the Sudan (UNAMIS), to UNMIS on the date of its establishment.

Additionally, the Council decided that the mandate of UNMIS should include, *inter alia*, the support of the implementation of the Comprehensive Peace Agreement between the Government of the Republic of the Sudan and the Sudan People’s Liberation Movement/Sudan People’s Liberation Army by monitoring and verifying the implementation of the Ceasefire Agreement and investigating its violations, the assistance to the establishment of the disarmament, demobilization and reintegration programme and its implementation through voluntary disarmament and weapons collection and destruction, as well as the assistance in restructuring the police service and in the training of civilian police. UNMIS should also assist in promoting the rule of law, which implied the establishment of an independent judiciary and the protection of human rights, as both contribute to combating impunity and to long-term peace and stability. Furthermore, UNMIS should assist in developing and consolidating the national legal framework, as well as ensuring an adequate human rights presence, capacity, and expertise within UNMIS to carry out activities pertaining to human rights.

The mandate of UNMIS also comprised facilitating and coordinating the voluntary return of refugees and internally displaced persons, as well as humanitarian assistance by, *inter alia*, helping to establish the necessary security conditions, and providing demining assistance.

In the same resolution, the Council, acting under Chapter VII of the Charter of the United Nations, decided that UNMIS was authorized to take the necessary action to protect United Nations personnel, facilities, installations, and equipment, and to ensure the security and freedom of movement of United Nations personnel, humanitarian workers, and personnel of the joint assessment mechanism and assessment and evaluation commission. Without prejudice to the responsibility of the Government of the Sudan, UNMIS should also protect civilians under imminent threat of physical violence.

The Security Council, by resolution 1627 (2005) adopted on 23 September 2005, extended the UNMIS mandate until 24 March 2006.

(ii) *Changes in the mandate and/or extensions of time limits of ongoing peacekeeping missions or operations in 2005*

a. Cyprus

The United Nations Peacekeeping Force in Cyprus (UNFICYP) was established by Security Council resolution 186 (1964) of 4 March 1964. The Council, by resolution 1604 (2005), adopted on 15 June 2005, and resolution 1642 (2005), adopted on 14 December 2005, extended the mandate of UNFICYP until 15 December 2005 and 15 June 2006, respectively.

b. Syria and Israel

The United Nations Disengagement Observer Force (UNDOF) was established by Security Council resolution 350 (1974) of 31 May 1974. The Security Council, by resolution 1605 (2005), adopted on 17 June 2005, and resolution 1648 (2005), adopted on 21 December 2005, extended the mandate of UNDOF until 31 December 2005 and 30 June 2006, respectively.

c. Lebanon

The United Nations Interim Force in Lebanon (UNIFIL) was established by Security Council resolutions 425 (1978) and 426 (1978) of 19 March 1978. The Security Council, by resolution 1583 (2005), adopted on 28 January 2005, and resolution 1614 (2005), adopted on 29 July 2005, extended the UNIFIL mandate until 31 July 2005 and 31 January 2006, respectively.

d. Western Sahara

The United Nations Mission for the Referendum in Western Sahara (MINURSO) was established by Security Council resolution 690 (1991) of 29 April 1991. The Security Council, by resolution 1598 (2005), adopted on 28 April 2005, and resolution 1634 (2005), adopted on 28 October 2005, extended the MINURSO mandate until 31 October 2005 and 30 April 2006, respectively.

e. Georgia

The United Nations Observer Mission in Georgia (UNOMIG) was established by Security Council resolution 858 (1993) of 24 August 1993. The Security Council, by resolution 1582 (2005), adopted on 28 January 2005, and resolution 1615 (2005), adopted on 29 July 2005, extended the mandate of UNOMIG until 31 July 2005 and 31 January 2006, respectively.

f. Sierra Leone

The United Nations Mission in Sierra Leone (UNAMSIL) was established by Security Council resolution 1270 (1999) of 22 October 1999. The Security Council, by resolution 1610 (2005), adopted on 30 June 2005, and acting under Chapter VII of the Charter of the United Nations, extended the mandate of UNAMSIL for a final period of six months until 31 December 2005.¹⁰

g. Democratic Republic of the Congo

The United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) was established by Security Council resolution 1279 (1999) of 30 November 1999. The Security Council adopted resolution 1592 (2005) on 30 May 2005, resolution 1628 (2005) on 30 September 2005 and resolution 1635 (2005) on 28 October 2005 and, acting under Chapter VII of the Charter of the United Nations, extended the mandate of MONUC until 1 October 2005, 31 October 2005 and 30 September 2006, respectively.

On 6 September 2005, the Council adopted resolution 1621 (2005) and, acting under Chapter VII of the Charter of the United Nations, authorized an increase of MONUC personnel. The Council further authorized MONUC to provide additional support to the Independent Electoral Commission for the transport of electoral materials.

In resolution 1635 (2005), the Security Council authorized another increase of personnel in the military strength of MONUC to allow for the deployment of an infantry battalion in Katanga, with enabling assets including its own air mobility and appropriate medical support, to provide additional security within its area of operations during the electoral period.

h. Ethiopia and Eritrea

The United Nations Mission in Ethiopia and Eritrea (UNMEE) was established by Security Council resolution 1312 (2000) of 31 July 2000. The Security Council, by resolution 1586 (2005), adopted on 14 March 2005 and resolution 1622 (2005), adopted on 13 September 2005, extended the mandate of UNMEE until 15 September 2005 and 15 March 2006, respectively.

In resolution 1622 (2005), the Council adopted and approved the reconfiguration of the UNMEE military component, which included an increase in the number of military observers, and assistance to the parties in the mine action sector.

¹⁰ UNAMSIL successfully completed its mandate on 31 December 2005. See subsection (iv) of this section on “Political and peacebuilding missions concluded in 2005”.

On 23 November 2005, the Security Council adopted resolution 1640 (2005), in which it deeply deplored Eritrea's continued imposition of restrictions on the freedom of movement of UNMEE and demanded that the Government of Eritrea reverse, without further delay or preconditions, its decision to ban UNMEE helicopter flights, as well as other additional restrictions imposed on the operations of UNMEE, and also provide the Mission with the access, assistance, support and protection required for the performance of its duties. It also demanded that Ethiopia accept fully and without further delay the final and binding decision of the Eritrea-Ethiopia Boundary Commission and immediately take, without preconditions, concrete steps to enable the Commission to demarcate the border completely and promptly.

i. Liberia

The United Nations Mission in Liberia (UNMIL) was established by Security Council resolution 1509 (2003) of 19 September 2003. The Council, by resolution 1626 (2005) adopted on 19 September 2005 and, acting under Chapter VII of the Charter of the United Nations, extended the mandate of UNMIL until 31 March 2006.

In resolution 1626 (2005), the Security Council authorized UNMIL, subject to the consent of the troop-contributing countries concerned and the Government of Sierra Leone, to deploy United Nations military personnel to Sierra Leone from November 2005 in order to provide security for the Special Court for Sierra Leone.

On 11 November 2005, the Security Council adopted resolution 1638 (2005) by which it decided that the mandate of UNMIL should also include the apprehension and detention of former President Charles Taylor in the event of his return to Liberia and, in that case, to transfer him or facilitate his transfer to Sierra Leone for prosecution before the Special Court for Sierra Leone. The Mission should also keep the Liberian Government, the Sierra Leonean Government and the Council fully informed in this regard.

j. Côte d'Ivoire

The United Nations Operation in Côte d'Ivoire (UNOCI) was established by Security Council resolution 1528 (2004) of 27 February 2004. The Council adopted resolution 1594 (2005) on 4 April 2005, resolution 1600 (2005) on 4 May 2005, resolution 1603 (2005) on 3 June 2005 and resolution 1609 (2005) on 24 June 2005, by which, acting under Chapter VII of the Charter of the United Nations, it extended the mandate of UNOCI and the French forces supporting it until 4 May 2005, 4 June 2005, 24 June 2005 and 24 January 2006, respectively.

On 1 February 2005, the Council adopted resolution 1584 (2005) and, acting under Chapter VII of the Charter of the United Nations, authorized UNOCI and the French forces which support it to monitor the implementation of the measures to prevent the supply, sale or transfer to Côte d'Ivoire of arms or any related matériel, in particular military aircraft and equipment, in cooperation with UNMIL, UNAMSIL and the Governments concerned, as imposed by resolution 1572 (2004). It further authorized UNOCI to collect arms and any related matériel brought into Côte d'Ivoire in violation of those measures and to dispose of such arms and related matériel as appropriate.

The Council also requested the Secretary-General, to create, as referred to in resolution 1572 (2004), a group of experts consisting of no more than three members (the Group of Experts), to examine and analyze information gathered by UNOCI and the French forces in the context of the monitoring mandate set out in the resolution. The Group of Experts was also tasked to gather and analyze all relevant information in Côte d'Ivoire and countries of the region on the flow of arms and related matériel and on the provision of assistance, advice or training related to military activities, as well as networks operating in violation of the measures imposed by resolution 1572 (2004). The Group of Experts should also consider and recommend ways of improving the capabilities of States, in particular those in the region, to ensure the effective implementation of the measures imposed by resolution 1572 (2004); exchange with UNOCI and the French forces information that might be of use in fulfilling its monitoring mandate; provide the Security Council Committee established by resolution 1572 (2004) with a list, with supporting evidence, of those found to have violated the measures imposed by that resolution and those found to have supported them in such activities, for possible future measures by the Council; and cooperate with other relevant groups of experts, in particular that established on Liberia by resolutions 1521 (2003) and 1579 (2004).

In resolution 1603 (2005), the Security Council authorized the Secretary-General to begin the necessary planning and preparations, including troop and police generation, to facilitate a timely deployment in the event that the Council decided to increase the UNOCI authorized strength of troops and police and to adjust its mandate.

In resolution 1609 (2005), the Security Council decided that the mandate of UNOCI should include, *inter alia*, the monitoring of the cessation of hostilities and movements of armed groups; prevention of any hostile action, in particular within the Zone of Confidence, and the investigation of violations of the ceasefire; assistance to the Government of National Reconciliation in monitoring the borders, with particular attention to the situation of Liberian refugees and to any cross-border movement of combatants; disarmament, demobilization, reintegration, repatriation and resettlement; and protection of United Nations personnel, institutions and civilians, including the support, in coordination with the Ivorian and South African authorities, of provision of security for members of the Government of National Reconciliation.

Its mandate further included monitoring the arms embargo, support for humanitarian assistance, support for the organization of open, free and fair elections, assistance in the field of human rights, monitoring of Ivorian mass media, in particular with regard to any incidents of incitement by the media to hatred, intolerance and violence, assistance to the Government of National Reconciliation in conjunction with the African Union, the Economic Community of West African States (ECOWAS) and other international organizations in restoring a civilian policing presence throughout Côte d'Ivoire, and assistance to the Ivorian parties with the implementation of temporary and interim security measures in the northern part of the country, as well as re-establishing the authority of the judiciary and the rule of law throughout Côte d'Ivoire.

The Council also authorized, for a period of seven months, until 24 January 2006, an increase in the military as well as in the civilian police components of UNOCI. The Council further authorized the temporary redeployment of military and civilian police personnel among UNMIL, UNAMSIL and UNOCI to deal with challenges which could

not be handled within the authorized personnel ceiling of a given mission, subject to certain conditions.

On 21 October 2005, the Security Council adopted resolution 1633 (2005) and, acting under Chapter VII of the Charter of the United Nations, demanded that all Ivorian parties cooperate fully in their operations by guaranteeing the safety, security and freedom of movement of the personnel, as well as associated personnel of UNOCI, and the French forces which support it throughout the territory. The Council also affirmed that any obstacle to their freedom of movement or to the full implementation of their mandates would not be tolerated.

On 15 December 2005, the Security Council adopted resolution 1643 (2005) and, acting under Chapter VII of the Charter of the United Nations, decided that any serious obstacle to the freedom of movement of UNOCI and of the French forces which support it, or any attack or obstruction to the action of UNOCI, the French forces, the High Representative for the elections and the International Working Group would constitute a threat to the peace and national reconciliation process.

k. Haiti

The United Nations Stabilization Mission in Haiti (MINUSTAH) was established by Security Council resolution 1542 (2004) of 30 April 2004. The Security Council adopted resolution 1601 (2005) on 31 May 2005 and resolution 1608 (2005) on 22 June 2005 and, acting under Chapter VII of the Charter of the United Nations, extended the mandate of MINUSTAH until 24 June 2005 and 15 February 2006, respectively.

In resolution 1608 (2005), the Security Council supported the recommendations of the Secretary-General,¹¹ to temporarily increase, during the electoral period and subsequent political transition, the number of MINUSTAH military personnel in order to create a rapid reaction force in Haiti providing increased security. It also decided to temporarily increase, during this electoral period and subsequent political transition, the number of personnel of the MINUSTAH civilian police component.

1. Burundi

The United Nations Operation in Burundi (ONUB) was established by Security Council resolution 1545 (2004) of 21 May 2004. The Security Council adopted resolution 1602 (2005) on 31 May 2005, resolution 1641 (2005) on 30 November 2005 and resolution 1650 (2005) on 21 December 2005, and, acting under Chapter VII of the Charter of the United Nations, extended the mandate of ONUB until 1 December 2005, 15 January 2006 and 1 July 2006, respectively.

In resolution 1650 (2005), the Security Council authorized, subject to certain conditions, the temporary redeployment of military and civilian police personnel among ONUB and MONUC.

¹¹ Report of the Secretary-General on MINUSTAH (S/2005/313).

(iii) *Other ongoing peacekeeping missions or operations in 2005*

During 2005, there were a number of other ongoing peacekeeping operations or missions, including the United Nations Truce Supervision Organization (UNTSO) in Israel, established by Security Council resolution 50 (1948) of 29 May 1948; the United Nations Military Observer Group (UNMOGIP) in India and Pakistan, established by Security Council resolution 91 (1951) of 30 March 1951; and the United Nations Interim Mission in Kosovo (UNMIK), established by Security Council resolution 1244 (1999) of 12 June 1999.

(iv) *Peacekeeping missions or operations concluded in 2005*

a. **Sierra Leone**

The United Nations Mission in Sierra Leone (UNAMSIL) which had been established on 22 October 1999 by the Security Council in its resolution 1270 (1999), successfully completed its mandate on 31 December 2005.

b. **Timor-Leste**

The United Nations Mission of Support in Timor-Leste (UNMISSET) was established by the Security Council in its resolution 1410 (2002) of 17 May 2002. The Council, by resolution 1573 (2004), decided to extend the mandate of UNMISSET for a final period of six months until 20 May 2005, at which date it successfully completed its mandate.

(b) Political and peacebuilding missions

(i) *Political and peacebuilding missions established in 2005*

Timor-Leste

On 28 April 2005, the Security Council adopted resolution 1599 (2005) and decided to establish the United Nations Office in Timor-Leste (UNOTIL), a one-year follow-on special political mission in Timor-Leste which would remain until 20 May 2006. The Council further decided that UNOTIL should support, through the provision of advisers, the development of critical State institutions, the further development of the police, and the development of the Border Patrol Unit. It should also provide training in the observance of democratic governance and human rights, and monitor and review progress in those areas.

(ii) *Changes in the mandate and/or extensions of the time limits of ongoing political and peacebuilding missions in 2005*

a. **Somalia**

The United Nations Political Office in Somalia (UNPOS) was established by the Secretary-General on 15 April 1995.¹² On 18 February 2005, in his report on the situation on

¹² See the exchange of letters between the Secretary-General and the President of the Security Council dated 18 and 21 April 1995 (S/1995/322 and S/1995/323).

Somalia,¹³ the Secretary-General proposed an expanded role for the United Nations, which would include assisting in the continuous dialogue among Somali parties for reconciliation, assisting in the effort to address the issue of Somaliland, coordinating support for the peace process with Somalia's neighbours and other international partners, chairing the Coordination and Monitoring Committee, as well as playing a leading political role in peacebuilding activities in Somalia. The Secretary-General also stated that UNPOS staff had to be augmented in key areas, such as political and military liaison, information, civil police, disarmament, demobilization and reintegration and human rights.

On 16 November 2005, in a letter addressed to the President of the Security Council, the Secretary-General informed of his intention to continue the activities of UNPOS during the biennium 2006–2007. The Council took note of the Secretary-General's intention.¹⁴

b. Great Lakes region

The Office of the Special Representative of the Secretary-General for the Great Lakes region was established by the Secretary-General on 19 December 1997.¹⁵ On 23 December 2005, in a letter addressed to the President of the Security Council, the Secretary-General informed the Council of his intention to extend the mandate of his Special Representative until 31 March 2006. The Council took note of the Secretary-General's intention.¹⁶

c. Guinea-Bissau

The United Nations Peacebuilding Support Office in Guinea-Bissau (UNOGBIS) was established in March 1999 by the Secretary-General with the support of the Security Council.¹⁷ On 12 September 2005, in his report on developments in Guinea-Bissau and on the activities of UNOGBIS,¹⁸ the Secretary-General proposed a revision of the mandate to allow UNOGBIS to support efforts to consolidate constitutional rule, to enhance political dialogue and to promote national reconciliation and respect for the rule of law and human rights, and to assist in strengthening the capacity of national institutions to maintain constitutional order. The Office should also, *inter alia*, prevent and manage conflict, as well as consolidate peace and democracy, encourage and support national efforts to reform the security sector by developing stable civil-military relations in the framework of public sector reform, and help mobilize international support in this regard.

On 2 December 2005, in a letter addressed to the President of the Security Council, the Secretary-General referred to his proposal contained in his report of 12 September

¹³ S/2005/89.

¹⁴ See the exchange of letters between the Secretary-General and the President of the Security Council dated 16 and 21 November 2005 (S/2005/729 and S/2005/730).

¹⁵ See the exchange of letters between the Secretary-General and the President of the Security Council dated 12 and 19 December 1997 (S/1997/994 and S/1997/995).

¹⁶ See the exchange of letters between the Secretary-General and the President of the Security Council dated 23 and 30 December 2005 (S/2005/849 and S/2005/850).

¹⁷ See the exchange of letters between the Secretary-General and the President of the Security Council dated 26 February 1999 and 3 March 1999 (S/1999/232 and S/1999/233).

¹⁸ S/2005/575.

2005, and recommended that the mandate of UNOGBIS be extended until 31 December 2006. The Council took note of the Secretary-General's proposal and recommendation.¹⁹

d. Central African Republic

The United Nations Peacebuilding Office in the Central African Republic (BONUCA) was established by the Secretary-General on 15 February 2000.²⁰ On 30 November 2005, in a letter addressed to the President of the Security Council, the Secretary-General recommended that the mandate of BONUCA be extended from 1 January to 31 December 2006. The Council took note of the Secretary-General's recommendation.²¹

e. Tajikistan

The United Nations Tajikistan Office of Peacebuilding (UNTOP) was established by the Secretary-General on 1 June 2000.²² On 10 May 2005, in a letter addressed to the President of the Security Council, the Secretary-General informed the Council of his intention to continue the activities of UNTOP for a further period of one year, until 1 June 2006. The Council took note of the Secretary-General's intention.²³

f. West Africa

The United Nations Office for West Africa (UNOWA) was established by the Secretary-General for a period of three years, starting from January 2002.²⁴ On 14 December 2004, in a letter addressed to the President of the Security Council, the Secretary-General informed the Council of his intention to extend the mandate of UNOWA for a period of three years, from 1 January 2005 to 31 December 2007, and to strengthen it. On 11 January 2005, the President of the Security Council informed the Secretary-General that the Council had taken note of his intentions regarding the mandate, functions and activities of UNOWA.²⁵ The revised mandate included, *inter alia*, the enhancement of linkages in the work of the United Nations and other partners in the subregion, the liaison with and provision of assistance to ECOWAS and the Mano River Union, in consultation with other subregional organizations and international partners, as well as good offices roles on behalf of the Secretary-General.

¹⁹ See the exchange of letters between the Secretary-General and the President of the Security Council dated 2 and 15 December 2005 (S/2005/795 and S/2005/796).

²⁰ Ninth report of the Secretary-General on the United Nations Mission in the Central African Republic (S/2000/24) and Statement by the President of the Security Council dated 10 February 2000 (S/PRST/2000/5).

²¹ See the exchange of letters between the Secretary-General and the President of the Security Council dated 30 November 2005 and 2 December 2005 (S/2005/758 and S/2005/759).

²² See the exchange of letters between the Secretary-General and the President of the Security Council dated 26 May 2000 and 1 June 2000 (S/2000/518 and S/2000/519).

²³ See the exchange of letters between the Secretary-General and the President of the Security Council, dated 10 and 18 May 2005 (S/2005/323 and S/2005/324).

²⁴ See the exchange of letters between the Secretary-General and the President of the Security Council, dated 26 and 29 November 2001 (S/2001/1128 and S/2001/1129).

²⁵ See the exchange of letters between the Secretary-General and the President of the Security Council dated 14 December 2004 and 11 January 2005 (S/2005/16 and S/2005/17).

The activities of UNOWA would also comprise, *inter alia*, the enhancement of harmonization of activities of the various United Nations missions and other regional entities in West Africa; the strengthening of cooperation with the ECOWAS Secretariat in the promotion of peace, stability, good governance and development; the enhancement of cooperation with ECOWAS member States and their representatives in Abuja; the strengthening of cooperation with key regional and international partners, including the Mano River Union, the International Contact Group for the Mano River Basin, the European Union and the Bretton Woods institutions, as well as civil society organizations and the private sector. The mandate of UNOWA also comprised the development of better knowledge and awareness about cross-border and subregional problems confronting West Africa, as well as the facilitation by the Special Representative of the Secretary-General, in his capacity of chairman of the Cameroon-Nigeria Mixed Commission, of the implementation of the work plan approved by Cameroon and Nigeria towards the implementation of the 10 October 2002 ruling of the International Court of Justice on the land and maritime boundary dispute between the two countries.²⁶ The Special Representative should also assist in the demarcation process.

g. Afghanistan

The United Nations Mission in Afghanistan (UNAMA) was established by Security Council resolution 1401 (2002) of 28 March 2002. On 24 March 2005, the Security Council, in resolution 1589 (2005), decided to extend the mandate of UNAMA for an additional period of twelve months.²⁷

h. Iraq

The United Nations Assistance Mission for Iraq (UNAMI) was established by Security Council resolution 1500 (2003) of 14 August 2003. On 11 August 2005, the Security Council, by its resolution 1619 (2005), decided to extend the mandate of UNAMI for another period of twelve months.²⁸

i. The Sudan

The United Nations Advance Mission in the Sudan (UNAMIS) was established by Security Council resolution 1574 (2004) of 19 November 2004. The Security Council adopted resolution 1585 (2005) on 10 March 2005 and resolution 1588 (2005) on 17 March 2005, by which it extended the mandate of UNAMIS until 17 March 2005 and 24 March 2005, respectively.

²⁶ *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Judgment, I.C.J. Reports 2002, p. 303.

²⁷ See also the report of the Secretary-General on the situation in Afghanistan and its implications for international peace and security (A/59/744-S/2005/183) in which the Secretary-General recommended that the mandate be extended for twelve months.

²⁸ See also the letter from the Secretary-General addressed to the President of the Security Council dated 3 August 2005 (S/2005/509).

j. Lebanon

On 14 November 2005, in his letter to the President of the Security Council, the Secretary-General informed the Council that he had decided to expand the mandate of his Personal Representative for southern Lebanon to include coordination of United Nations political activities for the whole of Lebanon, and that the title of the post would be accordingly changed to Personal Representative of the Secretary-General for Lebanon.²⁹

(iii) *Other ongoing political and peacebuilding missions and offices in 2005*

The Office of the United Nations Special Coordinator for the Middle East (UNSCO), established by the Secretary-General on 1 October 1999,³⁰ continued operating through 2005.

(iv) *Political and peacebuilding missions concluded in 2005*

a. Bougainville (Papua New Guinea)

The United Nations Observer Mission in Bougainville (UNOMB), Papua New Guinea, was established on 1 January 2004 by the Secretary-General,³¹ and completed its mandate on 30 June 2005.³²

b. The Sudan

The United Nations Advance Mission in the Sudan (UNAMIS), established by Security Council resolution 1547 (2004) of 19 November 2004 completed its mandate on 24 March 2005. The Security Council, by resolution 1590 (2005) of 24 March 2005, requested that the Secretary-General transfer all functions performed by UNAMIS to the United Nations Mission in the Sudan (UNMIS).

(c) Other peacekeeping matters

(i) *Establishment of the Peacebuilding Commission*

On 20 December 2005, the Security Council and the General Assembly, acting concurrently, in accordance with Articles 7, 22 and 29 of the Charter of the United Nations, adopted resolutions 1645 (2005) and 60/180, respectively, and established a Peacebuilding Commission.³³ The Council and the Assembly decided that the main purposes of the Com-

²⁹ See the exchange of letters between the Secretary-General and the President of the Security Council dated 14 and 17 November 2005 (S/2005/725 and S/2005/726).

³⁰ See the exchange of letters between the Secretary-General and the President of the Security Council dated 10 and 16 September 1999 (S/1999/983 and S/1999/984).

³¹ See the exchange of letters between the Secretary-General and the President of the Security Council dated 19 and 23 December 2003 (S/2003/1198 and S/2003/1199).

³² On 28 March 2005, the Secretary-General informed the Security Council that UNOMB would complete its mandate and formally close down its activities on 30 June 2005 (S/2005/204).

³³ See also General Assembly resolution 60/1 of 16 September 2005 on “2005 World Summit Outcome” and section 2 of the present chapter.

mission were to bring together all relevant actors to marshal resources and to advise on and propose integrated strategies for post-conflict peacebuilding and recovery, as well as to focus attention on the reconstruction and institution-building efforts necessary for recovery from conflict and to support the development of integrated strategies in order to lay the foundation for sustainable development. The Commission should also provide recommendations and information to improve the coordination of all relevant actors within and outside the United Nations, develop best practices, help to ensure predictable financing for early recovery activities and extend the period of attention given by the international community to post-conflict recovery.

Furthermore, the Commission should meet in various configurations and have a standing Organizational Committee, responsible for developing its own rules of procedure and working methods. The Organizational Committee should include seven elected members of the Security Council, including permanent members; seven elected members of the Economic and Social Council, giving due consideration to those countries that have experienced post-conflict recovery; five top providers of assessed contributions to United Nations budgets and of voluntary contributions to United Nations funds, programmes and agencies, including a standing peacebuilding fund, selected by and from among the ten top providers; and five top providers of military personnel and civilian police to United Nations missions. Additionally, giving due consideration to representation from all regional groups in the overall composition of the Committee and to representation from countries that have experienced post-conflict recovery, seven members should be elected according to rules and procedures decided by the General Assembly. It was emphasized that a Member State can only be selected to serve in the Organizational Committee from one category at any one time.

The Council and Assembly also decided that country-specific meetings of the Commission, upon invitation of the Organizational Committee should include representatives from the country under consideration, countries in the region engaged in the post-conflict process and other countries that are involved in relief efforts and/or political dialogue, as well as relevant regional and subregional organizations. The major financial, troop and civilian police contributors involved in the recovery effort, the senior United Nations representative in the field and other relevant United Nations representatives, as well as such regional and international financial institutions as may be relevant, should also attend.

It was further decided that a representative of the Secretary-General should be invited to participate in all meetings of the Commission and that representatives from the World Bank, the International Monetary Fund and other institutional donors should be invited to participate in all meetings of the Commission in a manner suitable to their governing arrangements.

The Organizational Committee should establish the agenda of the Commission based on requests for advice from the Security Council and from the Secretary-General. Requests for advice from the Economic and Social Council, the General Assembly or concerned Member States are also possible under certain circumstances.

Finally, the Council and the Assembly decided that the Commission should make the outcome of its discussions and recommendations publicly available as United Nations documents to all relevant bodies and actors, including the international financial institutions, and that it should act in all matters on the basis of consensus.

(ii) *Question of sexual exploitation and abuse in peacekeeping operations*

a. **General Assembly**

In his letter to the President of the General Assembly dated 24 March 2005, the Secretary-General submitted the report of the Special Adviser to the Secretary General on Sexual Exploitation and Abuse.³⁴ In this report, the Special Adviser recommended that the General Assembly reiterate its approval of the standards set out in the Secretary-General's bulletin on special measures for protection from sexual exploitation and sexual abuse,³⁵ which is mandatory for all United Nations staff, irrespective of their type of appointment, and that the Assembly request the Secretary-General to ensure that all civilian personnel are bound by them.

The Special Adviser further recommended, *inter alia*, that the Assembly authorize the establishment of a professional investigative capacity to investigate allegations of sexual exploitation, abuse and misconduct of a similar grave nature against all categories of peacekeeping personnel. This investigative body should be independent of the missions and could be regionally based. He also proposed that personnel violating the said standards be subjected to disciplinary action and that the General Assembly characterize such breaches as "serious misconduct" under the Staff Regulations. Any staff members, civilian police or military observers found to have committed acts of sexual exploitation and abuse should have their appointments terminated. Finally, he also suggested that if acts of sexual exploitation and abuse by military members of peacekeeping missions constituted crimes, they should result in prosecution under the laws of the troop-contributing country.

In April 2005, the Special Committee on Peacekeeping Operations and its Working Group released its report,³⁶ in which it recognized the shared responsibility of the Secretariat and Member States to take every measure within their purview to prevent sexual exploitation and abuse, by all categories of personnel in United Nations peacekeeping missions, and to enforce United Nations standards of conduct in that regard. The Special Committee also recommended, *inter alia*, the establishment of a professional and independent investigative capacity, with the necessary expertise, within the administrative authority of the United Nations, to investigate such allegations of misconduct where complex investigative techniques were needed. Furthermore, the Special Committee recommended amending the Staff Regulations and contracts with United Nations Volunteers, consultants and individual contractors to specifically include provisions stating that acts of sexual exploitation and abuse constitute serious misconduct.

On 22 June 2005, the General Assembly adopted resolution 59/300 entitled "Comprehensive review of a strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations" and affirmed the need for the Organization to adopt without delay a comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations, as recommended by the Special Committee and the Special Adviser to the Secretary-General. The Assembly also welcomed the report of the Special Adviser and endorsed the proposals, recommendations and conclusions of the Special Committee in chapter II of its report.

³⁴ A/59/710.

³⁵ ST/SGB/2003/13 of 15 April 2003.

³⁶ A/59/19/Add.1 (advance version).

b. Security Council

On 24 March 2005, the Security Council adopted resolution 1590 (2005) and requested the Secretary-General to take the necessary measures to achieve actual compliance with the United Nations zero tolerance policy on sexual exploitation and abuse, including the development of strategies and appropriate mechanisms to prevent, identify and respond to all forms of misconduct, including sexual exploitation and abuse, as well as the enhancement of training for personnel to prevent misconduct and ensure full compliance with the United Nations code of conduct.³⁷ The Council also requested the Secretary-General to take all necessary action, in accordance with the Secretary-General's bulletin on special measures for protection from sexual exploitation and sexual abuse. The Council further urged troop-contributing countries to take appropriate preventive action, including pre-deployment awareness training, and to take disciplinary action and other action to ensure full accountability in cases of such misconduct involving their personnel.

Furthermore, the Security Council, in a Statement by the President of the Security Council dated 31 May 2005,³⁸ condemned in the strongest terms, all acts of sexual abuse and exploitation committed by United Nations peacekeeping personnel. It confirmed that the conduct and discipline of troops was primarily the responsibility of troop-contributing countries, but also recognized the shared responsibility of the Secretary-General and all Member States to take every measure within their purview to prevent sexual exploitation and abuse by all categories of personnel in United Nations peacekeeping missions, and to enforce United Nations standards of conduct in that regard. Finally, the Council stated that it would consider including relevant provisions for prevention, monitoring, investigation and reporting of misconduct cases in its resolutions establishing new mandates or renewing existing mandates.

In this regard, the Security Council welcomed in several subsequent resolutions the efforts undertaken by the different United Nations mandated peacekeeping operations to implement the Secretary-General's zero tolerance policy on sexual exploitation and abuse and to ensure full compliance of its personnel with the United Nations code of conduct.³⁹ In these resolutions, the Council also urged troop-contributing countries to take preventive and disciplinary action to ensure that such acts involving their personnel were properly investigated and punished.

³⁷ See also resolution 1592 (2005) of 30 March 2005 on the situation concerning the Democratic Republic of the Congo, in which the Council, *inter alia*, reaffirmed its concern regarding acts of sexual exploitation and abuse committed by United Nations personnel against the local population.

³⁸ S/PRST/2005/21.

³⁹ Resolution 1602 (2005) of 31 May 2005 on the situation in Burundi, resolution 1603 (2005) of 3 June 2005 on the situation in Côte d'Ivoire, resolution 1604 (2005) of 15 June 2005 on the situation in Cyprus, resolutions 1605 (2005) of 17 June 2005 and 1648 (2005) of 21 December 2005 on the situation in the Middle East (Syria and Israel), resolution 1608 (2005) of 22 June 2005 on the question concerning Haiti, resolution 1609 (2005) of 24 June 2005 on the situation in Côte d'Ivoire, resolution 1610 (2005) of 30 June 2005 on the situation in Sierra Leone, resolution 1614 (2005) of 29 July 2005 on the situation in the Middle East (Lebanon), resolution 1615 (2005) of 29 July 2005 on the situation in Georgia, resolution 1626 (2005) of 19 September 2005 on the situation in Liberia and resolution 1635 (2005) of 28 October 2005 on the situation concerning the Democratic Republic of the Congo.

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

On 29 March 2005, the General Assembly adopted, on the recommendation of the Fourth Committee, resolution 59/281 entitled “Comprehensive review of the whole question of peacekeeping operations in all their aspects”. In this resolution, the Assembly welcomed the report of the Special Committee on Peacekeeping Operations⁴⁰ and endorsed the proposals, recommendations and conclusions contained therein. In addition, the Assembly decided that the Special Committee should continue its efforts for a comprehensive review of the whole question of peacekeeping operations in all their aspects, review the implementation of its previous proposals, and consider any new proposals so as to enhance the Organization’s capacity to fulfil its responsibilities in this area.

(d) Action of Member States authorized by the Security Council

(i) *Action of Member States authorized in 2005*

Bosnia and Herzegovina

On 21 November 2005, the Security Council adopted resolution 1639 (2005) and, acting under Chapter VII of the Charter of the United Nations, authorized the Member States acting through or in cooperation with the European Union (EU) to establish for a further period of twelve months, a multinational stabilization force (EUFOR) as the legal successor of the Stabilization Force in Bosnia and Herzegovina (SFOR) under unified command and control. It decided that EUFOR would fulfil its missions in relation to the implementation of the Peace Agreement⁴¹ in cooperation with the North Atlantic Treaty Organization (NATO) presence in accordance with the arrangements agreed between NATO and EU as communicated to the Security Council in their respective letters of 19 November 2004.⁴²

The Council further authorized the Member States acting through or in cooperation with the EU or NATO to take all necessary measures to effect the implementation of and ensure compliance with the Peace Agreement, and to take all necessary measures, at the request of either EUFOR or NATO Headquarters, in defense of the EUFOR or NATO presence, respectively, and to assist both organizations in carrying out their missions. In relation to this particular authorization, the Council also recognized the right of both EUFOR and the NATO presence to take all necessary measures to defend themselves from attack or threat of attack.

⁴⁰ A/59/19 and Corr. 1. For the final text, see *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 19 (A/59/19/Rev.1)*.

⁴¹ Dayton Agreement on implementing the Federation of Bosnia and Herzegovina of 10 November 1995 (S/1995/1021, annex).

⁴² S/2004/915 and S/2004/916.

(ii) *Changes in authorization and/or extension of time limits in 2005*

a. Côte d'Ivoire

The Security Council adopted resolutions 1594 (2005) on 4 April 2005, 1600 (2005) on 4 May 2005, 1603 (2005) on 3 June 2005 and 1609 (2005) on 24 June 2005, by which it extended the mandate of the French forces supporting the United Nations Operation in Côte d'Ivoire (UNOCI) until 4 May 2005, 4 June 2005, 24 June 2005 and 24 January 2006, respectively.

On 1 February 2005, the Security Council adopted resolution 1584 (2005) and, acting under Chapter VII of the Charter of the United Nations, requested the French forces which support UNOCI, in addition to their mandate set out in resolution 1528 (2004), to provide security assistance to UNOCI in carrying out its tasks. The Council also authorized the French forces to monitor the implementation of the measures imposed by resolution 1572 (2004), in cooperation with the Group of Experts⁴³ created under the same resolution, and with the United Nations Mission in Liberia, the United Nations Mission in Sierra Leone and the Governments concerned.

In resolution 1609 (2005), the Security Council, acting under Chapter VII of the Charter of the United Nations, authorized the French forces supporting UNOCI to use all necessary means to support UNOCI in accordance with the agreement reached between UNOCI and the French authorities, and in particular to: (i) contribute to the general security of the area of activity of the international forces; (ii) intervene at the request of UNOCI in support of its elements whose security may be threatened; and (iii) intervene, in consultation with UNOCI against belligerent actions, if the security conditions so require, outside the UNOCI areas of deployment. The French forces were also authorized to help to protect civilians in the deployment areas of their units and to contribute to monitoring the arms embargo established by resolution 1572 (2004).

b. Afghanistan

On 13 September 2005, the Security Council adopted resolution 1623 (2005) and, acting under Chapter VII of the Charter of the United Nations, decided to extend the authorization of the International Security Assistance Force (ISAF), as defined in resolutions 1386 (2001) and 1510 (2003), for a period of twelve months beyond 13 October 2005. The Council also authorized ISAF to take all necessary measures to fulfil its mandate.

⁴³ See subsection j. on Côte d'Ivoire under section 3 (a) (ii) above on "Peacekeeping missions and operations".

**(e) Sanctions imposed under Chapter VII of the Charter
of the United Nations⁴⁴**

(i) Measures with respect to Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them⁴⁵

On 29 July 2005, the Security Council adopted resolution 1617 (2005) and, acting under Chapter VII of the Charter of the United Nations, decided that all States should take the measures as previously imposed by resolution 1267 (1999),⁴⁶ resolution 1333 (2000),⁴⁷ and resolution 1390 (2002)⁴⁸ with respect to Al-Qaida, Usama bin Laden, and the Taliban and other individuals, groups, undertakings and entities associated with them, as referred to in the list created pursuant to resolution 1267 (1999) (the Consolidated List).

In accordance with the said measures, the States should freeze without delay the funds and other economic resources of these individuals and groups, including funds derived from property owned or controlled by them or by persons acting on their behalf, and ensure that neither these funds nor economic resources were made available for such persons' benefit. They should also prevent the entry into or the transit through their territories of these individuals. It was nevertheless specified that nothing in the resolution should oblige any State to deny entry or require the departure from its territories of its own nationals, or apply where the entry or transit was necessary for the fulfilment of a judicial process, or when the Committee established pursuant to resolution 1267 (1999) (the 1267 Committee) determined on a case-by-case basis that entry or transit was justified. Further, States should prevent the supply, sale or transfer, to these individuals and groups, of arms and related matériel, as well as technical advice, assistance, or training related to military activities.

In addition, the Council decided that, when proposing names for the Consolidated List, States should act in accordance with resolution 1526 (2004) and henceforth provide to the 1267 Committee a statement of case describing the basis of the proposal. The Council also decided that this statement might be used by the 1267 Committee in responding to queries from Member States whose nationals, residents or entities have thus been included, and that it might decide on a case-by-case basis to release the information to other parties, with the prior consent of the designating State. Finally, the Council decided that States may

⁴⁴ See also General Assembly resolution 60/1 of 16 September 2005 on "2005 World Summit Outcome" and section 2 of the present chapter.

⁴⁵ See also subsection b. on Al-Qaida and Taliban Sanctions Committee under section 3 (f) (ii) below on "Terrorism".

⁴⁶ In paragraph 4 of resolution 1267 (1999), the Council obligated all States to deny permission for any aircraft owned, leased or operated by or on behalf of the Taliban from taking off or landing in their territory. The Council also froze those funds derived or generated from property owned or controlled by the Taliban.

⁴⁷ In paragraph 8 of resolution 1333 (2000), the Council imposed financial sanctions on Usama bin Laden and individuals and entities associated with him, as designated by the Committee established by resolution 1267 (1999).

⁴⁸ In paragraph 2 of resolution 1390 (2002), the Council imposed financial sanctions, a travel ban and an arms embargo on Usama bin Laden, members of the Al-Qaida organization and the Taliban, and other individuals or groups associated with them.

continue to provide additional information which should be kept on a confidential basis within the 1267 Committee unless the submitting State agreed to its dissemination.

(ii) *The Sudan*

On 29 March 2005, the Security Council adopted resolution 1591 (2005) and, acting under Chapter VII of the Charter of the United Nations, decided, in light of the failure of all parties to the conflict in Darfur to fulfil their commitments, to establish a Committee of the Security Council (the 1591 Committee) that would, *inter alia*, monitor the implementation of certain measures referred to in the resolution (see below: freezing of funds and travel restrictions) and in resolution 1556 (2004).⁴⁹ It would also designate the individuals subject to such measures and consider requests for exemptions; establish guidelines to facilitate the implementation of the said measures; consider requests from and provide prior approval to the Government of the Sudan for the movement of military equipment and supplies into the Darfur region; and encourage a dialogue between the 1591 Committee and interested Member States.

In addition, the Council also requested the Secretary-General to appoint for six months a Panel of Experts comprised of four members, which should be based in Addis Ababa, Ethiopia. The Panel should travel regularly to El-Fasher and other locations in the Sudan, and operate under the direction of the 1591 Committee.

The Council further decided that the individuals, as designated by the 1591 Committee, who impeded the peace process, constituted a threat to stability in Darfur and the region, committed violations of international humanitarian or human rights law or other atrocities, violated the measures implemented by Member States in accordance with resolution 1556 (2004) and resolution 1591 (2005), or were responsible for offensive military overflights, should be subject to the measures identified in resolution 1591 (2005).

As regards the measures set forth in resolution 1591 (2005) and referred to above, the Council decided that all States should take the necessary measures to prevent entry into or transit through their territories of all persons as designated by the 1591 Committee. It was nevertheless specified that nothing in the resolution should obligate a State to refuse entry into its territory to its own nationals. It was also clarified that these measures should not apply where the 1591 Committee had determined that such travel was justified on the ground of humanitarian need, including religious obligation, or where it concluded that an exemption would otherwise further the objectives of the Council's resolutions for the creation of peace and stability in the Sudan and the region.

The Council similarly decided that all States should freeze all funds and economic resources on their territories that were owned or controlled by the persons designated by the 1591 Committee, and ensure that no funds or economic resources were made available by their nationals or by any persons within their territories, to or for the benefit of such

⁴⁹ Paragraph 7 of resolution 1556 (2004) imposed an arms embargo on all non-governmental entities and individuals operating in the states of North Darfur, South Darfur and West Darfur. Paragraph 8 obliged States to take all necessary measures to prevent any provision to all non-governmental entities and individuals operating in North Darfur, South Darfur and West Darfur by their nationals or from their territories of technical training or technical assistance related to the materials prohibited by the arms embargo.

persons or entities. Such measures did not apply to funds that had been determined by relevant States to be necessary for basic or extraordinary expenses, or to be the subject of a judicial, administrative or arbitral lien or judgment.

(iii) *The Democratic Republic of the Congo*

On 18 April 2005, the Security Council adopted resolution 1596 (2005) and, acting under Chapter VII of the Charter of the United Nations, decided, *inter alia*, that the measures established by paragraph 20 of resolution 1493 (2003) that had been applicable to certain groups only,⁵⁰ should from then on apply to any recipient in the territory of the Democratic Republic of the Congo.

The Council further decided that these measures should not apply to supplies of arms and related matériel or technical training and assistance intended solely for support by units of the army and police of the Democratic Republic of the Congo, the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), or for humanitarian or protective use. All future authorized shipments of arms and related matériel, consistent with such exemptions, should only be made to receiving sites as designated by the Government of National Unity and Transition, in coordination with MONUC, with advanced notification to the Committee of the Security Council established by resolution 1533 (2004) (the 1533 Committee).

The Council also decided that the Government of the Democratic Republic of the Congo on the one hand, and the Governments of States bordering Ituri and the Kivus on the other hand, should take all necessary measures to strengthen customs controls on the borders between Ituri or the Kivus and the neighbouring States, and to ensure that all means of transport on their respective territories would not be used in violation of the measures taken by Member States.

Furthermore, the Council decided that all States should immediately freeze the funds, which were owned by persons designated by the 1533 Committee or that were held by entities owned by any persons acting on their behalf, on their territories from the date of adoption of resolution 1596 (2005) and ensure that no funds were made available by their nationals or by any persons within their territories, to or for the benefit of such persons or entities. These provisions did not apply to funds that had been determined by relevant States to be necessary for basic expenses, for extraordinary expenses, or to be the subject of a judicial, administrative or arbitration lien or judgment.

Finally, also by resolution 1596 (2005), the Council decided that the 1533 Committee should designate persons and entities with respect to the measures set forth in the resolution, including aircraft and airlines, and regularly update its list, and seek from all States

⁵⁰ Paragraph 20 of resolution 1493 (2003) reads as follows: "Decides that all States, including the Democratic Republic of the Congo, shall, for an initial period of 12 months from the adoption of this resolution, take the necessary measures to prevent the direct or indirect supply, sale or transfer, from their territories or by their nationals, or using their flag vessels or aircraft, of arms and any related matériel, and the provision of any assistance, advice or training related to military activities, to all foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and of Ituri, and to groups not party to the Global and All-inclusive agreement, in the Democratic Republic of the Congo".

concerned information regarding the actions taken by them to enforce the measures, and any further information it might consider useful. The 1533 Committee should also call upon all States concerned to provide it with information regarding the actions taken by them to investigate and prosecute, as appropriate, individuals designated by the 1533 Committee; and promulgate guidelines as may be necessary to facilitate the implementation of the resolution.

On 29 July 2005, the Security Council adopted resolution 1616 (2005) and, acting under Chapter VII of the Charter of the United Nations, decided in light of the failure by the parties to comply with the demands of the Council, to renew until 31 July 2006 some provisions of resolution 1493 (2003), as amended and expanded by resolution 1596 (2005).

On 21 December 2005, the Security Council adopted resolution 1649 (2005) and, acting under Chapter VII of the Charter of the United Nations, decided, *inter alia*, to extend, for a period expiring on 31 July 2006, certain provisions of resolution 1596 (2005) to the following individuals, as designated by the 1533 Committee: (i) political and military leaders of foreign armed groups operating in the Democratic Republic of the Congo who impede the disarmament and the voluntary repatriation or resettlement of combatants belonging to those groups; and (ii) political and military leaders of Congolese militias receiving support from outside the Democratic Republic of the Congo and, in particular those operating in Ituri, who impede the participation of their combatants in the disarmament, demobilization and reintegration processes.

The Council further decided that the measures imposed under resolution 1649 (2005), as well as under resolution 1596 (2005), should not apply where the 1533 Committee had authorized, in advance and on a case-by-case basis, the transit of individuals returning to the territory of the State of their nationality or participating in efforts to bring to justice perpetrators of grave violations of human rights or international humanitarian law.

Finally, the Council demanded that the Governments of Uganda, Rwanda, the Democratic Republic of the Congo and Burundi take measures to prevent the use of their respective territories in support of violations of the arms embargo imposed by resolutions 1493 (2003) and 1596 (2005), and renewed by resolution 1616 (2005), or in support of activities of armed groups present in the region. The Council further demanded that all States neighbouring the Democratic Republic of the Congo, as well as the Government of National Unity and Transition, impede any kind of support to the illegal exploitation of Congolese natural resources, particularly by preventing the flow of such resources through their respective territories.

(iv) *Liberia*

On 21 June 2005, the Security Council adopted resolution 1607 (2005) and, acting under Chapter VII of the Charter of the United Nations, decided, *inter alia*, to renew the measures on diamonds imposed by resolution 1521 (2003) for a further period of six months.⁵¹

⁵¹ In paragraph 6 of resolution 1521 (2003), the Council decided that all States should take the necessary measures to prevent the direct or indirect import of all rough diamonds from Liberia to their territory, whether or not such diamonds originated in Liberia.

The Council also decided to re-establish the Panel of Experts appointed pursuant to resolution 1579 (2004) for a further period until 21 December 2005, for a follow-up assessment mission to Liberia and neighbouring States in order to investigate and compile a report on the implementation, and any violations, of the measures imposed by resolution 1521 (2003), including any information relevant to the designation by the Committee established by resolution 1521 (2003) of the individuals described in resolutions 1521 (2003)⁵² and 1532 (2004).⁵³

The Panel of Experts should also assess the impact and effectiveness of the measures imposed by resolution 1532 (2004), the progress made towards meeting the conditions for lifting the measures imposed by resolution 1521 (2003) and the humanitarian and socio-economic impact of the said measures.

On 20 December 2005, the Security Council adopted resolution 1647 (2005) and, acting under Chapter VII of the Charter of the United Nations, decided to renew the measures on arms and travel imposed by resolution 1521 (2003) for a further period of twelve months, and to renew the measures on diamonds and timber imposed by resolution 1521 (2003) for a further period of six months.⁵⁴

(v) *Lebanon*

On 31 October 2005, the Security Council adopted resolution 1636 (2005) upon having examined the report of the United Nations International Independent Investigation Commission⁵⁵ concerning its investigation into the 14 February 2005 terrorist bombing in Beirut that killed former Lebanese Prime Minister Rafiq Hariri and 22 other persons, and caused injury to dozens of people. The Council, acting under Chapter VII of the Charter of the United Nations, decided, as a step in assisting in the investigation of the crime, without prejudice to the ultimate judicial determination of guilt or innocence of any individual, that all individuals designated by the Commission or the Government of Lebanon as suspected of involvement in the planning, sponsoring, organizing or perpetrating of this terrorist act, should be subject to certain measures. Among these, it was decided that all States should take the measures necessary to prevent entry into or transit through their territories of such individuals, or, if such individuals were found within their territory, ensure, in accordance with applicable law, that they would be available for interview by

⁵² In paragraph 4 (a) of resolution 1521 (2003), the Council imposed a travel ban on all individuals, as designated by the Committee, who constituted a threat to the Liberian peace process or who were engaged in activities aimed at undermining peace and stability in Liberia and the subregion.

⁵³ In paragraph 1 of resolution 1532 (2004), the Council imposed financial sanctions on former Liberian President Charles Taylor, his immediate family members or other close allies as, designated by the Committee.

⁵⁴ In paragraphs 6 and 10 of resolution 1521 (2003), the Council decided that all States should take the necessary measures to prevent the direct or indirect import of all rough diamond from Liberia to their territory, and the import into their territories of all round logs and timber products originating in Liberia.

⁵⁵ Report of the International Independent Investigation Commission established pursuant to Security Council 1595 (2005), annexed to the letter dated 20 October 2005 from the Secretary-General to the President of the Security Council (S/2005/662). See also the subsection on Lebanon below, under section 3 (f) (i) of this chapter, "Terrorism".

the Commission if it was so requested. It was also decided that all States should: freeze all funds on their territories owned or controlled by such individuals, or by persons acting on their behalf; ensure that no funds were made available for the benefit of such individuals or entities; and cooperate fully, in accordance with applicable law, with any international investigation related to the assets or financial transactions of such individuals or entities, or persons acting on their behalf, including through sharing of financial information.

The Security Council further decided to establish a Committee of the Security Council to undertake the tasks described in resolution 1636 (2005), and that this Committee and any adopted measures would terminate when the Committee would have reported to the Security Council that all investigative and judicial proceedings relating to this terrorist attack had been completed, unless otherwise decided by the Security Council.

(vi) *Côte d'Ivoire*

On 15 December 2005, the Security Council adopted resolution 1643 (2005) and, acting under Chapter VII of the Charter of the United Nations, decided to renew until 15 December 2006 certain provisions of resolution 1572 (2004).⁵⁶ It further decided that any serious obstacle to the freedom of movement of the United Nations Operation in Côte d'Ivoire (UNOCI) and of the French forces supporting it, or any attack or obstruction to the action of UNOCI, of the French forces, of the High Representative for the elections and of the International Working Group⁵⁷ would constitute a threat to the peace and the national reconciliation process for purposes of the said resolution.

Furthermore, the Council requested the Secretary-General to re-establish for a period of six months, in consultation with the Committee established by Security Council resolution 1572 (2004), a Group of Experts consisting of no more than five experts on arms, diamonds, finance, customs, civil aviation and any other relevant area of expertise with the task, *inter alia*, of exchanging information with UNOCI and the French forces in the context of their monitoring mandate set out in resolution 1609 (2005).⁵⁸ The Group of Experts should also gather and analyze all relevant information in Côte d'Ivoire and elsewhere on flows of arms and related matériel, on provision of assistance, advice or training related to military activities, on networks operating in violation of the measures imposed by resolution 1572 (2004), and on the sources of financing, including from the exploitation of natural resources in Côte d'Ivoire, for purchases of arms and related matériel and activities. Further, it should: consider and recommend ways of improving the capabilities of States to ensure the effective implementation of the measures imposed by resolutions 1572 (2004) and 1643 (2005); report to the Security Council on the implementation of the measures

⁵⁶ In paragraphs 7 to 12 of resolution 1572 (2004), the Council imposed an arms embargo on Côte d'Ivoire and prohibited the provision of assistance related to military activities to Côte d'Ivoire. The Council also imposed a travel ban and financial sanctions on all persons who constituted a threat to the peace and the national reconciliation process in Côte d'Ivoire.

⁵⁷ The International Working Group was established on 6 October 2005 by the African Union to evaluate, monitor and follow up the peace process in Côte d'Ivoire (see S/2005/639).

⁵⁸ In resolution 1609 (2005), the Council authorized UNOCI to monitor the cessation of hostilities and movements of armed groups and to monitor the arms embargo. The Council also authorized the French forces supporting UNOCI to contribute to the monitoring of the arms embargo. See also subsection (j) on Côte d'Ivoire under section 3 (a) (ii) above on "Peacekeeping missions and operations".

imposed by the said resolutions, with recommendations in this regard; and monitor the implementation of individual measures set out in resolution 1572 (2004).⁵⁹

Finally, the Council decided that all States should take the necessary measures to prevent the import of all rough diamonds from Côte d'Ivoire to their territory.

(f) Terrorism⁶⁰

On 14 September 2005, the Security Council adopted resolution 1624 (2005) and called upon all States to adopt such measures as may be necessary and appropriate, in accordance with their obligations under international law, to prohibit, by law, incitement to commit a terrorist act, prevent such conduct, and deny safe haven to any persons with respect to whom there was credible and relevant information giving serious reasons for considering that they have been guilty of such conduct.

The Council further called upon all States to report to the Counter-Terrorism Committee (CTC), established by Security Council resolution 1373 (2001), on the steps they have taken to implement this resolution and directed the CTC to include in its dialogue with Member States their implementation efforts, work with Member States to help build capacity, and report back to the Council in twelve months on the implementation of the resolution.

(i) Security Council Committees established in 2005

Lebanon⁶¹

On 7 April 2005, the Security Council adopted resolution 1595 (2005) and reaffirmed its unequivocal condemnation of the 14 February 2005 terrorist bombing in Beirut, Lebanon, that killed former Lebanese Prime Minister Rafiq Hariri and others, and caused injury to dozens of people. In the resolution, the Council decided to establish an international independent investigation commission (the Commission), based in Lebanon, to assist the Lebanese authorities in their investigation of all aspects of that terrorist act, including helping to identify its perpetrators, sponsors, organizers and accomplices.

The Council further decided that, to ensure the Commission's effectiveness in the discharge of its duties, it should enjoy the full cooperation of the Lebanese authorities, including full access to all documentary, testimonial and physical information and evidence; have the authority to collect any additional information and evidence pertaining to this terrorist act, as well as to interview all officials and other persons in Lebanon; enjoy freedom of movement throughout the Lebanese territory, including access to all sites and facilities; and be provided with the facilities necessary to perform its functions. It should be granted, as well as its premises, staff and equipment, the privileges and immunities to

⁵⁹ In paragraphs 9 and 11 of resolution 1572 (2004), the Council imposed a travel ban and financial sanctions on all persons designated by the Committee as constituting a threat to the peace and national reconciliation process in Côte d'Ivoire.

⁶⁰ See also General Assembly resolution 60/1 of 16 September 2005 on "2005 World Summit Outcome" and section 2 of the present chapter.

⁶¹ See also the subsection on Lebanon under section 3 (e) (v) above on "Sanctions imposed under Chapter VII of the Charter of the United Nations".

which they are entitled under the Convention on the Privileges and Immunities of the United Nations of 13 February 1946.⁶²

Although the Council requested the Commission to complete its work within three months, the Council authorized the Secretary-General to extend the Commission's operations for a further period not exceeding three months, if he deemed it necessary to enable the Commission to complete its investigation.

On 31 October 2005, the Security Council adopted resolution 1636 (2005), in which it welcomed the extension of the mandate of the Commission until 15 December 2005, and decided to extend it further, if recommended by the Commission and requested by the Lebanese Government. The Council also endorsed the Commission's conclusion that it was incumbent upon the Syrian authorities to clarify a considerable part of the questions which remained unsolved and decided, in that context, that the Commission should have *vis-à-vis* Syria the same rights and authorities as mentioned in resolution 1595 (2005) and that Syria must cooperate with the Commission fully and unconditionally on that basis.

By the same resolution 1636 (2005), the Council also decided to establish a Committee of the Security Council **consisting of all its members as a step to assist in the investigation**. The Committee was given the function, *inter alia*, to **register as subject to the measures**⁶³ set forth in the resolution all individuals designated by the Commission or the Government of Lebanon as suspected of involvement in the planning, sponsoring, organizing or perpetrating of this terrorist act. The Committee would also have to approve exceptions to the measures established on a case-by-case basis, to register the removal of an individual from the scope of these measures, and to inform all Member States as to which individuals were subject to the said measures.

On 15 December 2005, the Council adopted resolution 1644 (2005) and, acting under Chapter VII of the Charter of the United Nations, decided, as recommended by the Commission and requested by the Lebanese Government, to extend the mandate of the Commission, initially until 15 June 2006. The Council further authorized the Commission, following the request of the Lebanese Government, to extend its technical assistance to the Lebanese authorities with regard to their investigations on terrorist attacks perpetrated in Lebanon since 1 October 2004, and requested the Secretary-General to present, in consultations with the Commission and the Lebanese Government, recommendations to expand the mandate of the Commission to include investigations of those other attacks.

(ii) *Other ongoing Security Council Committees in 2005*

a. **Counter-Terrorism Committee**

On 14 September 2005, the Security Council adopted resolution 1624 (2005) and directed the Counter-Terrorism Committee to include in its dialogue with Member States

⁶² United Nations, *Treaty Series*, vol. 1, p.15, and vol. 90, p. 327 (corrigendum to vol. 1).

⁶³ For those measures, see the subsection on Lebanon under section 3 (e) (v) above on "Sanctions imposed under Chapter VII of the Charter of the United Nations".

their efforts to implement this resolution,⁶⁴ work with Member States to help build capacity, including through spreading best legal practice and promoting exchange of information in this regard, and report back to the Council in twelve months on the implementation of the resolution.

b. Al-Qaida and Taliban Sanctions Committee⁶⁵

On 29 July 2005, the Security Council adopted resolution 1617 (2005) and, acting under Chapter VII of the Charter of the United Nations, decided, *inter alia*, that when proposing names for the list created by resolution 1267 (1999) of individuals subject to the related sanctions measures (the Consolidated List), States should act in accordance with paragraph 17 of resolution 1526 (2004)⁶⁶ and henceforth also provide the Committee with a statement of case describing the basis of the proposal. Furthermore, Member States were called upon to use a checklist provided for in annex II of the resolution to report to the Committee on specific actions that they had taken to implement the measures outlined in the resolution with regard to individuals and entities added to the Consolidated List. The Council further decided that the statement of case submitted by the designating State might be used by the Committee in responding to queries from Member States, whose nationals, residents or entities had been included on the Consolidated List. It also decided that the Committee may decide, on a case-by-case basis, to release the information to other parties, with the prior consent of the designating State and that States may continue to provide additional information, which should be kept on a confidential basis within the Committee, unless the submitting State agreed to the dissemination of such information.

Furthermore, the Council decided to extend the mandate of the New York-based Monitoring Team for a period of 17 months, under the direction of the Committee, with the responsibility to collate, assess, monitor, report on and make recommendations regarding implementation of the sanctions measures. Its tasks also included, *inter alia*, to pursue case studies and to submit three comprehensive and independent reports on implementation by States of the measures referred to in this resolution. Further, the Monitoring Team should report on listing, de-listing, and exemptions granted pursuant to resolution 1452 (2002), and analyze reports submitted pursuant to resolution 1455 (2003), the checklists submitted pursuant to this resolution, and other information submitted by Member States to the Committee as instructed by the Committee. Finally, it should work closely and share information with the CTC Counter-Terrorism Executive Directorate and the 1540 Com-

⁶⁴ In resolution 1624 (2005), the Council called upon States to adopt measures to prohibit by law incitement to commit terrorist acts, to prevent such conduct and deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of such conduct, among others. See also section 3 (f) above on “Terrorism”.

⁶⁵ See also subsection (i) on “Measures with respect to Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them” under section 3 (e) above on “Sanctions imposed under Chapter VII of the Charter of the United Nations”.

⁶⁶ Paragraph 17 of resolution 1526 (2004) reads as follows: “[The Security Council] [c]alls upon all States, when submitting new names to the Committee’s list, to include identifying information and background information, to the greatest extent possible, that demonstrates the individual(s)’ and/or entity(ies)’ association with Usama bin Laden or with members of the Al-Qaida organization and/or the Taliban, in line with the Committee’s guidelines”.

mittee's Group of Experts⁶⁷ in order to identify areas of convergence and to help facilitate concrete coordination among the three Committees.

Finally, the Security Council decided that the Monitoring Team should develop a plan to assist the Committee in addressing non-compliance with the measures referred to in this resolution, consult with Member States in advance of travel to selected Member States, encourage Member States to submit names and additional identifying information for inclusion on the Consolidated List, and study and report to the Committee on the changing nature of the threat of Al-Qaida and the Taliban and the best measures to confront it.

c. 1540 Committee (non-proliferation of weapons of mass destruction)

Between June and July 2005, the Committee established under Security Council resolution 1540 (2004) entered its substantive stage of work. Eight experts were recruited to assist in the examination of national reports dealing, *inter alia*, with the implementation of States' obligations to take and enforce effective measures to establish domestic control to prevent the proliferation of nuclear, chemical or biological weapons and their means of delivery.⁶⁸

4. Disarmament and related matters⁶⁹

(a) Nuclear disarmament and non-proliferation issues

In 2005, as in previous years, the Conference on Disarmament⁷⁰ could not adopt a programme of work and therefore did not establish any subsidiary body to deal with the issue of nuclear disarmament, which was only addressed during the plenary meetings.⁷¹

The seventh session of the Review Conference of the Non-Proliferation of Nuclear Weapons Treaty took place in New York from 2 to 27 May 2005 and was attended by 153 States parties, various specialized agencies and other intergovernmental organizations, as well as a number of non-governmental organizations. The late adoption of the agenda of the Conference and some continuous disagreements among States concerning procedural aspects of the Conference delayed the review process of the implementation of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).⁷² Nevertheless, agree-

⁶⁷ The 1540 Committee (non-proliferation of weapons of mass destruction) was established by Security Council resolution 1540 (2004) of 28 April 2004 to report to the Council on the implementation of that resolution by Member States.

⁶⁸ For information on the activities undertaken and results achieved by the 1540 Committee during the period 1 January to 16 December 2005, see Report to the Security Council by the Chairman of the Security Council Committee established pursuant to resolution 1540 (2004) (S/2005/799).

⁶⁹ For detailed information, see *The United Nations Disarmament Yearbook*, vol. 30:2005 (United Nations publication, Sales No. E.06.IX.1).

⁷⁰ The Conference on Disarmament was established in 1979, as a result of the First Special Session on Disarmament of the General Assembly in 1978, as the single multilateral disarmament negotiating forum of the international community.

⁷¹ Report of the Conference on Disarmament to the General Assembly of the United Nations (CD/1761).

⁷² United Nations, *Treaty Series*, vol. 729, p. 161.

ment was reached on the mandates and the time allocated to the Conference's three main committees and their subsidiary bodies. In addition to considering the items allocated to each main committee during the 2000 Review Conference (implementation of the provisions of the Treaty relating to the non-proliferation of nuclear weapons, disarmament and international peace and security; safeguards and nuclear-weapon-free zones; and the implementation of the provisions of the Treaty relating to the inalienable right of all parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes, without discrimination), it was decided that Main Committee I would consider non-proliferation and disarmament education, and Main Committee II would address institutional issues, including proposals for institutionally strengthening accountability, compliance and implementation powers.⁷³ Special attention was given by Subsidiary Body III to the question of withdrawal from the NPT, especially in view of the experience of the Democratic People's Republic of Korea's withdrawal in 2003. The Final Document of the Review Conference outlined only its procedural arrangements and proceedings because of the persistent divergence of views among States over various nuclear non-proliferation and disarmament related issues.⁷⁴

In 2005, the International Atomic Energy Agency (IAEA), in connection with its verification activities, continued to follow-up on information pertaining to Iran's nuclear programme and activities. In its report dated 2 September 2005,⁷⁵ IAEA stated that all the declared nuclear material in Iran had been accounted for, and therefore such material was not diverted to prohibited activities. However, IAEA also observed that it was still not in a position to conclude that there were no undeclared materials or activities in Iran. On 8 August 2005, after having informed IAEA accordingly, Iran resumed some uranium conversion activities under the Agency's safeguards. On 11 August 2005, in its resolution GOV/2005/64, the Board of Governors, *inter alia*, expressed serious concern that Iran had decided to resume such activities.

On 24 September 2005, the Board of Governors adopted resolution GOV/2005/77, in which it, *inter alia*, noted that IAEA was still unable to conclude that there were no undeclared nuclear materials or activities in Iran. It found that Iran's failure and breaches of obligations to comply with its NPT Safeguards Agreement constituted non-compliance in the context of article XII.C of the Agency's Statute. Moreover, it also found that the history of concealment of its nuclear activities and their nature, issues brought to light during the verification activities performed by IAEA, and the resulting absence of confidence that its nuclear programme was exclusively for peaceful purposes, had given rise to questions that were within the competence of the Security Council.

Regarding other safeguards activities, during 2005, IAEA continued to hold discussions with the States of the Middle East region on the application of comprehensive safeguards to all nuclear activities in that region, as well as on the development of model agreements as a step towards the creation of a nuclear-weapon-free zone in the Middle East.

⁷³ NPT/CONF.2005/DECI. See also NPT/CONF.2000/1, annex VIII, of the Final report of the Preparatory Committee for the 2000 Review Conference of Parties to the Treaty on the Non-Proliferation of Nuclear Weapons for a description of the issues considered by the three Main Committees of the Review Conference.

⁷⁴ NPT/CONF.2005/57 (Part I).

⁷⁵ GOV/2005/67.

Furthermore, the third Review Meeting of the Contracting Parties to the Convention on Nuclear Safety was held in Vienna, Austria, from 11 to 22 April 2005.⁷⁶

On the subject of the Convention on Physical Protection of Nuclear Material,⁷⁷ in January 2005, the Director General of IAEA had received requests from 55 States parties to the Convention to convene a conference to consider proposed amendments thereto, the text of which had been circulated on 5 July 2004. The Conference met in Vienna, Austria, from 4 to 8 July 2005. On 8 July, the Conference to Consider Proposed Amendments to the Convention on the Physical Protection of Nuclear Material adopted by consensus an Amendment to the Convention.⁷⁸

Regarding the Comprehensive Nuclear-Test-Ban Treaty (CTBT),⁷⁹ the Secretary-General of the United Nations, in his capacity as its Depositary, convened the fourth Conference on Facilitating the Entry into Force of the CTBT, following a request by a majority of States that had ratified the Treaty. The Conference was held in New York, from 21 to 23 September 2005. The Conference offered States an opportunity to review overall progress since the Treaty's adoption in 1996 and focus on developments since the previous Conference held in September 2003. On its last day, the Conference adopted a Final Declaration and Measures to Promote the Entry into Force of the CTBT,⁸⁰ in which it, *inter alia*, reaffirmed the "firm determination to end nuclear test explosions or any other nuclear explosions" and called upon all States "to refrain from acts which would defeat the object and purpose of the Treaty pending its entry into force." It was also recommended that States consider establishing a trust fund, financed by voluntary contributions, to support activities aimed at promoting the Treaty.

In the area of ballistic missile proliferation, the fourth regular meeting of the subscribing States to the Hague Code of Conduct against Ballistic Missile Proliferation (HCOG) was held in Vienna, Austria, from 2 to 3 June 2005. By the end of 2005, the HCOG had 123 subscribing States, which agreed on a text for a draft resolution to be presented to the General Assembly during its sixtieth session (see General Assembly resolution 60/62 of 8 December 2005).

⁷⁶ See the Summary Report of the Third Review Meeting CNS-RM-2005/08 FINAL. For more details on the Meeting, see subsection (d) (ii) on the Convention on Nuclear Safety under chapter III B 8 "International Atomic Energy Agency".

⁷⁷ United Nations, *Treaty Series*, vol. 1456, p. 101.

⁷⁸ For the Final Act of the Conference and the text of the Amendment, see GOV/INF/2005/10-GC(49)/INF/6, attachment. For more detailed information, see also in chapter III B 8, subsection (d) (i) on the Convention on Physical Protection of Nuclear Material.

⁷⁹ A/50/1027.

⁸⁰ CTBT-Art.XIV/2005/6.

*General Assembly*⁸¹

On 8 December 2005, the General Assembly adopted, on the recommendation of the First Committee, 12 resolutions and 2 decisions concerning nuclear weapons and non-proliferation issues,⁸² of which five are highlighted below.

In resolution 60/53, entitled “Conclusion of effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons”, the Assembly recommended that endeavours be made to achieve a legally binding instrument encompassing a common approach.

In its resolution 60/65, entitled “Renewed determination towards the total elimination of nuclear weapons”, the General Assembly called upon States to join and implement the NPT unconditionally and immediately. It also emphasized the importance of starting negotiations on a fissile material cut-off treaty and its early conclusion and that in the meantime, a moratorium on the production of fissile material for any nuclear weapons should be declared.

The General Assembly also adopted resolution 60/70 entitled “Nuclear disarmament”, in which it urged the nuclear-weapon States to immediately stop the qualitative improvement, development, production and stockpiling of nuclear warheads and their delivery systems, and, as an interim measure, to immediately de-alert and deactivate their nuclear weapons and to take concrete measures to further reduce the operational status of their nuclear-weapon systems. The Assembly also called for the convening of an international conference on nuclear disarmament in all its aspects at an early date to identify and deal with concrete measures of disarmament.

In its resolution 60/76, entitled “Follow-up to the advisory opinion of the International Court of Justice on the *Legality of the Threat or Use of Nuclear Weapons*”, the General Assembly called upon all States to immediately fulfil the obligation under the Advisory Opinion⁸³ by commencing multilateral negotiations leading to an early conclusion of a nuclear weapons convention prohibiting the development, production, testing, deployment, stockpiling, transfer, threat or use of nuclear weapons and providing for their elimination.

Finally, the General Assembly, in its resolution 60/95 on the “Comprehensive Nuclear-Test-Ban Treaty”, firmly encouraged Member States to maintain their moratoriums on nuclear-weapons test explosions or any other explosions and to refrain from acts that would defeat the object and purpose of the Treaty.

(b) Biological and chemical weapons issues

The year 2005 celebrated the 30th anniversary of the entry into force of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological

⁸¹ See also General Assembly resolution 60/1 of 16 September 2005 on “2005 World Summit Outcome” and section 2 of the present chapter.

⁸² See General Assembly resolutions 60/46, 60/53, 60/56, 60/57, 60/60, 60/65, 60/70, 60/76, 60/79, 60/88, 60/92, and 60/95 and decisions 60/515 and 60/517.

⁸³ See *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226.

(Biological) and Toxin Weapons and on Their Destruction, 1972⁸⁴ (BWC). In this context, the third Meeting of Experts from States parties to the BWC⁸⁵ and the third Meeting of States parties to the same convention, which were both the last set of meetings of a three-year long process aimed at strengthening the implementation and effectiveness of the BWC leading up to the sixth Review Conference, were held in Geneva, Switzerland, in June and December 2005, respectively. The Meeting of the States parties adopted a series of procedural decisions regarding the sixth Review Conference and its preparatory committee, to be held in 2006.⁸⁶

Also in 2005, the tenth session of the Conference of States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction was held in November, in The Hague, the Netherlands, where the objectives of the 2003 Action Plan on National Implementation and Universality of the Convention were reaffirmed.⁸⁷

The United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), which was established by Security Council resolution 1284 (1999) to verify Iraq's compliance with its obligation to be rid of its weapons of mass destruction and to operate a system of ongoing monitoring and verification to ascertain that Iraq does not reacquire the same weapons prohibited by the Security Council, has been inactive in the field since March 2003. Nevertheless, UNMOVIC continued to carry out its activities which could be implemented outside of Iraq.⁸⁸

*General Assembly*⁸⁹

On 8 December 2005, the General Assembly adopted resolution 60/67 entitled "Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction" and resolution 60/96 entitled "Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction", in which the Assembly called upon States to fulfil their obligations under the respective Conventions.

(c) Conventional weapons issues

On 3 July 2005, the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunitions (Firearms Protocol), supplementing the United Nations Convention against Transnational Organized Crime, entered into force.⁹⁰

⁸⁴ United Nations, *Treaty Series*, vol. 1015, p. 163.

⁸⁵ For the report of the Meeting of Experts, see BWC/MSP/2005/MX/3.

⁸⁶ For the report of the Meeting of States parties, see BWC/MSP/2005/3.

⁸⁷ For the report of the Conference of States parties, see C-10/5.

⁸⁸ For the quarterly reports on the activities of UNMOVIC, see S/2005/129 of 28 February 2008, S/2005/351 of 27 May 2005, S/2005/545 of 30 August 2005 and S/2005/742 of 29 November 2005.

⁸⁹ See also General Assembly resolution 60/1 of 16 September 2005 on "2005 World Summit Outcome" and section 2 of the present chapter.

⁹⁰ United Nations, *Treaty Series*, vol. 2326, p. 211.

Regarding the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to have Indiscriminate Effects (CCW),⁹¹ the Group of Governmental Experts to the CCW held its tenth, eleventh and twelfth sessions in March, August and November 2005, respectively, in Geneva, Switzerland. The Group conducted the majority of its work in the framework of two working groups: the Working Group on Explosive Remnants of War and the Working Group on Mines Other Than Anti-Personnel Mines.⁹² The Working Groups were requested to report on the work undertaken, including on recommendations made, at the following Meeting of the States Parties to the Convention, which was held from 24 to 25 November 2005, in Geneva, Switzerland. The main function of the Meeting of the States Parties was to consider the report from the Group of Governmental Experts, including the recommendations relating to the future mandates of the two Working Groups contained therein. In this regard, it adopted several decisions, including on the future work of the Working Groups, as well as on the meeting of the third Review Conference of CCW, which was to meet from 7 to 17 November 2006.⁹³

Furthermore, the seventh annual Conference of the States Parties to the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 annexed to the CCW (Protocol II as amended) was held on 23 November 2005, in Geneva, Switzerland. In the report of the Conference, the High Contracting Parties made an appeal for the universality of the Protocol.⁹⁴

In the area of anti-personnel mines, the sixth Meeting of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction was held from 28 November to 2 December 2005, in Croatia.⁹⁵ The discussions of the Meeting were organized in accordance with the main themes established in the Nairobi Action Plan (universalizing the Convention, destroying stockpiled anti-personnel mines, clearing mined areas, assisting the victims, and other matters essential for achieving the Convention's aims).⁹⁶ The Meeting, *inter alia*, reviewed the status and operation of the Convention and considered requests made in accordance with its articles 5 and 8.⁹⁷ At the final meeting, the Meeting of the States Parties adopted the Zagreb Declaration in which they reaffirmed the commitments made during the first Review Conference of the States Parties to the Convention.⁹⁸

Regarding the topic small arms and light weapons (SALW), the second Biennial Meeting of States to Consider the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its

⁹¹ United Nations, *Treaty Series*, vol. 1342, p. 137.

⁹² For the reports of the tenth, eleventh and twelfth sessions of the Group of Governmental Experts, see docs. CCW/GGE/X/5, CCW/GGE/XI/4 and CCW/GGE/XII/4, respectively.

⁹³ For the report of the Meeting of the States Parties, see CCW/MSP/2005/2.

⁹⁴ For the report of the Conference, see CCW/AP.II/CONF.7/2. The text of the appeal is reproduced in appendix IV.

⁹⁵ For the report of the Meeting of States Parties, see APLC/MSP.6/2005/5.

⁹⁶ For the Nairobi Action Plan, see APLC/CONF/2004/5. The themes are detailed in Part III.

⁹⁷ For the text of the Convention, see United Nations, *Treaty Series*, vol. 2056, p. 211.

⁹⁸ APLC/MSP.6/2005/5, appendix V.

Aspects was held from 11 to 15 July 2005, in New York, to consider the implementation of the Programme of Action, including international cooperation and assistance.⁹⁹

In addition, the Open-ended Working Group to Negotiate an International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons held its second and third sessions, from 24 January to 4 February, and from 6 to 17 June 2005, respectively.¹⁰⁰ During these sessions, the Open-ended Working Group discussed a draft text of an instrument relating to, *inter alia*, the requirements for marking SALW, record-keeping and cooperation in tracing. However, divergent views were expressed as to the scope of the instrument and whether or not it should be legally binding. At its third session, the Open-ended Working Group reached consensus and recommended that the General Assembly adopt a draft instrument of a political character, designed to create an efficient weapons tracing system. Nevertheless, consensus could not be reached with regard to the questions relating to the inclusion of SALW ammunition in the instrument, or on the applicability of its provisions to peacekeeping operations mandated by the Security Council or regional organizations. The Open-ended Working Group thus recommended that the two questions be considered in a separate process. On 8 December 2005, the General Assembly, in its decision 60/519, adopted the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small and Light Weapons.

(i) *General Assembly*

On 8 December 2005, the General Assembly, on the recommendation of the First Committee, adopted ten resolutions and two decisions¹⁰¹ relating to conventional weapons, of which three are highlighted below.

In resolution 60/68, entitled “Addressing the negative humanitarian and development impact of the illicit manufacture, transfer and circulation of small arms and light weapons and their excessive accumulation”, which was a one-time-only resolution on a topical subject, the General Assembly called upon States to explore ways to address in a more efficient way the humanitarian and development impact of illicit SALW and their accumulation, particularly in conflict or post-conflict situations.

The General Assembly also adopted resolution 60/81, “The illicit trade in small arms and light weapons in all its aspects”, in which the Assembly, among other things, called upon States to implement the International Instrument to Enable States to Identify and Trace, in a Timely and reliable Manner, Illicit Small and Light Weapons adopted by the Assembly in its decision 60/519.

Further, in resolution 60/74, entitled “Problems arising from the accumulation of conventional ammunition stockpiles in surplus”, the Assembly encouraged all interested States to assess, on a voluntary basis and in conformity with their legitimate security

⁹⁹ For the report of the second Biennial Meeting, see A/CONF.192/BMS/ 2005/1.

¹⁰⁰ For the report of the Open-ended Working Group, see A/60/88, annex.

¹⁰¹ See General Assembly resolutions 60/44, 60/68, 60/69, 60/71, 60/74, 60/77, 60/80, 60/81, 60/82 and 60/93 and decisions 60/226 and 60/519.

needs, whether parts of their stockpiles of conventional ammunition should be considered to be in surplus.

(ii) *Security Council*

Following a request made in 2004 by the Security Council, on 7 February 2005, the Secretary-General submitted a report to the Council on ways and means in which it could contribute to dealing with the question of illicit trade in SALW in situations under its consideration.¹⁰² On 17 February 2005, the Security Council considered the report of the Secretary-General and held an open debate on small arms where the progress made in key areas to trace illicit SALW was highlighted. On the same day, the President of the Council also made a Statement on this matter.¹⁰³

On 25 February 2005, the Security Council considered the report of the Secretary-General on ways to combat subregional and cross-border problems in West Africa.¹⁰⁴ At the end of the open debate on this item, a Presidential Statement was made on behalf of the Council¹⁰⁵ in which it expressed concern about the involvement of security and armed forces in illicit activities, such as the smuggling of arms, drugs and natural resources. It also emphasized the need to pursue security sector reforms with a view to improving civil-military relations in countries emerging from conflict situations.

(d) Regional disarmament activities of the United Nations

(i) *Africa*

In 2005, the United Nations Regional Centre for Peace and Disarmament in Africa (UNREC) undertook several tasks in the implementation of international instruments relating to disarmament and non-proliferation, in particular the Plan of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects through regional and subregional frameworks. In this regard, the Centre's activities focused on the support for peace processes and peace initiatives in Africa, disarmament and arms control, information, research and publications and advocacy and resource mobilization.

UNREC continued to implement the Small Arms Transparency and Control Regime in Africa project, with the participation of ten countries,¹⁰⁶ who agreed on an operational definition of the concept of transparency in regard to the transfers of SALW. Furthermore, UNREC undertook an inventory of the national capacities for the production of SALW in the ten participating States. It also provided technical assistance to the National Commissions and Focal Points for the Control of SALW.

¹⁰² S/2005/69.

¹⁰³ S/PRST/2005/7.

¹⁰⁴ S/2005/86.

¹⁰⁵ S/PRST/2005/9.

¹⁰⁶ Burkina Faso, Cameroon, Djibouti, Gabon, Kenya, Mali, Mozambique, Nigeria, South Africa and Togo.

(ii) *Latin America and the Caribbean*

During the year 2005, the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UNLiREC) provided assistance to States in the region in a variety of areas, including through the preparation of studies related to conventional weapons, supporting the implementation of and universal participation in multilateral instruments dealing with weapons of mass destruction, and through the organization of seminars on public security and firearms legislation. It further provided support to the Provisional Technical Secretariat of the Preparatory Commission for the Comprehensive-Nuclear-Test-Ban Treaty Organization in promoting adherence to the Treaty and developed, in cooperation with the Organization for the Prohibition of Chemical Weapons and the Government of Peru's National Council for the Prohibition of Chemical Weapons, the Chemical Weapons Regional Assistance and Protection Network (CW-RAPN).

(iii) *Asia-Pacific*

In 2005, the United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific carried out activities in relation to a wide variety of issues, including non-proliferation of weapons of mass destruction, nuclear-weapon-free zone and SALW. It organized a number of regional and subregional conferences, seminars and workshops, including on nuclear and conventional arms, SALW, disarmament and non-proliferation education issues.

The Regional Centre also organized a meeting of the five Central Asian States¹⁰⁷ from 7 to 9 February 2005, in Tashkent, Uzbekistan, to facilitate the negotiations and conclusion of the draft Central Asian Nuclear-Weapon-Free Zone Treaty.

(iv) *General Assembly*

On 8 December 2005, the General Assembly adopted, on the recommendation of the First Committee, ten resolutions and one decision¹⁰⁸ relating to the issue of regional disarmament, of which two are highlighted below.

In its resolution 60/52, entitled "Establishment of a nuclear-weapon-free zone in the region of the Middle-East", the Assembly urged all parties concerned to consider taking the practical and urgent steps required to implement the proposal to establish a nuclear-weapon-free zone in the Middle-East. Furthermore, the Assembly invited the countries of that region, pending the establishment of such a zone, not to develop, produce, test or otherwise acquire nuclear weapons or permit the stationing on their territories of nuclear weapons or nuclear explosive devices. It also requested the Secretary-General to continue consultations with the States of the region and other concerned States, and to seek their

¹⁰⁷ Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan.

¹⁰⁸ See General Assembly resolutions 60/48, 60/49, 60/50, 60/52, 60/58, 60/63, 60/64, 60/75, 60/87 and 60/94 and decision 60/516.

views on the measures outlined in the study annexed to his report of 10 October 1990¹⁰⁹ in order to move towards the establishment of such a zone.

In resolution 60/75, entitled “Conventional arms control at the regional and sub-regional levels”, the General Assembly, *inter alia*, requested the Conference on Disarmament to consider the formulation of principles that could serve as a framework for regional agreements on conventional arms control and to report on the subject.

(e) Other issues

(i) *Terrorism and disarmament*

General Assembly

On 8 December 2005, the General Assembly adopted, on the recommendation of the First Committee, resolution 60/73 entitled “Preventing the risk of radiological terrorism”, in which it called upon Member States to support international efforts to prevent the acquisition and use by terrorists of radioactive materials and sources by urging them to take and strengthen national prevention measures. It also invited Member States to support and endorse efforts of IAEA to enhance the safety and security of radioactive sources.

On the same day, the General Assembly also adopted, on the recommendation of the First Committee, resolution 60/78 entitled “Measures to prevent terrorists from acquiring weapons of mass destruction”, in which the Assembly underlined the urgent need to address the threat of weapons of mass destruction falling into the hands of terrorists. It called upon all Member States to support international efforts to prevent terrorists from acquiring such weapons and their means of delivery, and invited the Member States to sign and ratify the International Convention for the Suppression of Acts of Nuclear Terrorism, in order to bring about its early entry into force.

(ii) *Outer space*

Since the Conference on Disarmament did not reach an agreement on its programme of work, no subsidiary body was established to address the issue of the prevention of an arms race in outer space. Nevertheless, the Conference addressed matters related to this topic at its 988th plenary meeting on 30 June 2005.¹¹⁰

General Assembly

On 8 December 2005, the General Assembly adopted, on the recommendation of the First Committee, resolution 60/54 entitled “Prevention of an arms race in outer space”, in which it recalled that the legal regime applicable to outer space did not in and of itself guarantee the prevention of an arms race in that environment. It reiterated that the Conference

¹⁰⁹ A/45/435, annex (Study on effective and verifiable measures which would facilitate the establishment of a nuclear-weapon-free zone in the Middle East).

¹¹⁰ For the Final Record of the 988th Plenary Meeting of the Conference on Disarmament, see CD/PV.988.

on Disarmament had the primary role in the negotiation of multilateral agreements on such prevention.

On the same date, the Assembly also adopted, on the recommendation of the First Committee, resolution 60/66 entitled “Transparency and confidence-building measures in outer-space activities”, in which it invited all Member States to inform the Secretary-General prior to the sixty-first session of the General Assembly of their views on the advisability of further developing international outer space transparency and confidence-building measures.

(iii) *Human rights, human security and disarmament*

At its fifty-seventh session, the Geneva-based Subcommittee on the Promotion and Protection of Human Rights¹¹¹ contemplated a set of draft principles on the prevention of human rights violations committed with small arms and light weapons. The principles contained obligations both in relation to the regulation over the use of SALW by Governments and State officials, and with regard to measures to prevent human rights abuses by private actors using such weapons. The Subcommittee decided to request the Special Rapporteur, having prepared the draft principles, to submit her final report for consideration at its fifty-eighth session.¹¹²

(iv) *Role of science and technology in the context
of international security and disarmament*

General Assembly

On 8 December 2005, the General Assembly adopted, on the recommendation of the First Committee, resolution 60/51 entitled “Role of science and technology in the context of international security and disarmament”, in which it invited States to undertake additional efforts to apply science and technologies for disarmament-related purposes and to make disarmament-related technologies available to interested States. The Assembly also urged States to undertake multilateral negotiations aiming to establish universally acceptable guidelines for international transfers of dual-use goods and technologies, as well as high technology with military applications.

¹¹¹ The United Nations Subcommittee on the Promotion and Protection of Human Rights is the main subsidiary body of the Commission on Human Rights. It was established in 1947 as the “Subcommittee on Prevention of Discrimination and Protection of Minorities”, and got its current name in 1999. The Subcommittee meets annually and is composed of 26 experts who serve in their personal capacity.

¹¹² See the note by the Secretariat entitled “Prevention of human rights violations committed with small arms and light weapons” (E/CN.4/Sub.2/2005/35) and the decision by the Subcommittee on this topic, decision 2005/110 (Prevention of human rights violations with small arms and light weapons), contained in the report of the Subcommittee of its fifty-seventh session (E/CN.4/2006/2-E/CN.4/Sub.2/2005/44).

(v) *Multilateralism and disarmament***General Assembly**

On 8 December 2005, the General Assembly adopted, on the recommendation of the First Committee, resolution 60/59 entitled “Promotion of multilateralism in the area of disarmament and non-proliferation”, in which it reaffirmed multilateralism as the core principle in disarmament and non-proliferation negotiations and once again called upon all Member States to renew and fulfil their individual and collective commitments to multilateral cooperation as an important means of pursuing and achieving their common disarmament and non-proliferation objectives.

(vi) *Environmental norms and disarmament agreements***General Assembly**

Also on 8 December 2005, the General Assembly adopted, on the recommendation of the First Committee, resolution 60/60 entitled “Observance of environmental norms in the drafting and implementation of agreements on disarmament and arms control”. In the said resolution, the Assembly reaffirmed that international disarmament forums should take fully into account the relevant environmental norms in negotiating treaties and agreements on disarmament and arms limitation. It further called upon States to contribute to ensuring the application of scientific and technological progress within the framework of international security, disarmament and other related spheres, without detriment to the environment or to sustainable development.

5. Legal aspects of peaceful uses of outer space

The Legal Subcommittee on the Peaceful Uses of Outer Space held its forty-fourth session in Vienna from 4 to 15 April 2005.¹¹³

During the session, in the context of its consideration of the item on the status and application of the five United Nations treaties on outer space,¹¹⁴ the Subcommittee took note of their status and agreed that it would be premature for the related Working Group to meet during the session as more time was needed for States and organizations to respond to the letters that were sent pursuant to General Assembly resolution 59/116 concerning participation in those treaties, as well as to the recommendation for voluntary submission of information on their current practices regarding on-orbit transfer of ownership of space objects (resolution 59/115). The Subcommittee also agreed that it would reconvene the

¹¹³ For the report of the Legal Subcommittee, see A/AC.105/850.

¹¹⁴ The treaties include: Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies, 1967 (United Nations, *Treaty Series*, vol. 610, p. 205); Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, 1968 (United Nations, *Treaty Series*, vol. 672, p. 119); Convention on International Liability for Damage Caused by Space Objects, 1972 (United Nations, *Treaty Series*, vol. 961, p. 187); Convention on Registration of Objects Launched into Outer Space, 1975 (United Nations, *Treaty Series*, vol. 1023, p. 15) and Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, 1979 (United Nations, *Treaty Series*, vol. 1363, p. 3).

Working Group at its forty-fifth session in 2006, and that it would, at that time, review the need to extend the mandate of the Working Group beyond that session.

Under the agenda item concerning information on the activities of international organizations relating to space law, the Subcommittee, *inter alia*, commended the work of the United Nations Office for Outer Space Affairs in compiling the document “Education opportunities in space law: a directory”,¹¹⁵ its electronic publication “Space Law Update”¹¹⁶ and the organization of workshops on space law.

In connection with the item relating to the definition and delimitation of outer space and the character and utilization of the geostationary orbit,¹¹⁷ the Subcommittee had before it, among other things, a note by the Secretariat entitled “Questionnaire on possible legal issues with regard to aerospace objects: replies from Member States”¹¹⁸ and an analytical summary of the replies received.¹¹⁹ The Subcommittee reconvened the Working Group on this item to consider only matters relating to the definition and delimitation of outer space, in accordance with the agreement reached at its thirty-ninth session. It subsequently endorsed the Working Group’s report.¹²⁰

Regarding the agenda item entitled “Examination of the preliminary draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment (opened for signature at Cape Town on 16 November 2001)” the Legal Subcommittee considered two sub-items: “(a) Considerations relating to the possibility of the United Nations serving as supervisory authority under the future protocol” and (b) “Considerations relating to the relationship between the terms of the future protocol and the rights and obligations of States under the legal regime applicable to outer space.” It had before it for consideration, *inter alia*, a report of the open-ended ad hoc working group on the question of the appropriateness of the United Nations serving as the supervisory authority under the future protocol on matters specific to space assets,¹²¹ results of the preliminary exchange of views on the said report,¹²² as well as a note by the Secretariat: report of the Unidroit secretariat on the second session of the Unidroit committee of governmental experts for the preparation of a draft protocol to the Convention on International Interests in Mobile Equipment on matters specific to space assets.¹²³ The Subcommittee reconvened the Working Group on this item and endorsed its report.¹²⁴ It also agreed to

¹¹⁵ See A/AC.105/C.2/2005/CRP.4.

¹¹⁶ See <http://www.unoosa.org>.

¹¹⁷ The full title reads: “Matters relating to the definition and delimitation of outer space and 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”.

¹¹⁸ A/AC.105/635 and Add.1–12, Add.7/Corr.1 and Add.11/Corr.1.

¹¹⁹ A/AC.105/C.2/L.249 and Corr.1 and Add.1.

¹²⁰ A/AC.105/850, annex I.

¹²¹ A/AC.105/C.2/L.256.

¹²² A/AC.105/C.2/2005/CRP.7. See also the report on the question of the United Nations serving as the supervisory authority under the future protocol on matters specific to space assets (A/AC.105/C.2/2005/CRP.7/Rev.1 and 2).

¹²³ A/AC.105/C.2/2005/CRP.3.

¹²⁴ A/AC.105/850, annex II.

rename the item as follows: “Examination and review of the developments concerning the draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment”, and decided that the item, as renamed, should remain on the agenda of the Subcommittee at its forty-fifth session.

In its resolution 59/116, the General Assembly had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Subcommittee should consider the practice of States and international organizations in registering space objects. In this context, the Subcommittee had before it a background paper prepared by the Secretariat on the practice of States and international organizations in registering space objects¹²⁵ and received information on State practice, including bilateral agreements and legislation, aimed at implementing the Convention on Registration of Objects Launched into Outer Space, 1975. The Subcommittee reconvened the Working Group on this item, which, *inter alia*, agreed that, during the forty-fifth session of the Subcommittee, it could focus on the following four areas: (a) harmonization of practices (administrative and practical); (b) non-registration of space objects; (c) practice with regard to transfer of ownership of space objects in orbit; and (d) practice with regard to registration/non-registration of foreign space objects. The Subcommittee endorsed the Working Group’s report.¹²⁶

The Committee on the Peaceful Uses of Outer Space held its forty-eighth session in Vienna from 8 to 17 June 2005. The Committee took note of the Legal Subcommittee’s report and a number of views were expressed concerning the work of the Subcommittee.¹²⁷

General Assembly

On 8 December 2005, the General Assembly adopted, on the recommendation of the First Committee, two resolutions relating to the legal uses of outer space, resolution 60/54 entitled “Prevention of an arms race in outer space,” and resolution 60/66 entitled “Transparency and confidence-building measures in outer space activities”. In the former resolution, the Assembly reaffirmed its recognition that the legal regime applicable to outer space did not in and of itself guarantee the prevention of an arms race in outer space, that the regime played a significant role in the prevention of an arms race in that environment, that there was a need to consolidate and reinforce that regime and enhance its effectiveness and that it was important to comply strictly with existing agreements, both bilateral and multilateral.

Furthermore, on the same day, on the recommendation of the Fourth Committee, the Assembly adopted resolution 60/99 entitled “International cooperation in the peaceful uses of outer space”, in which it endorsed the report of the Committee on the Peaceful Uses of Outer Space.

¹²⁵ A/AC.105/C.2/L.255 and Corr.1 and 2.

¹²⁶ A/AC.105/850, annex III.

¹²⁷ For the report of the Committee on the Peaceful Uses of Outer Space, see *Official Records of the General Assembly, Sixtieth Session, Supplement No. 20 (A/60/20)*.

6. Human rights¹²⁸

(a) Sessions of the United Nations human rights bodies and treaty bodies

(i) *Commission on Human Rights*

The United Nations Commission on Human Rights was established in 1946 by the Economic and Social Council during its first session¹²⁹ to submit proposals, recommendations and reports to the Council regarding certain defined human rights areas, including on an international bill of rights, the status of women, the freedom of information, the protection of minorities and the prevention of discrimination on grounds of race, sex, language or religion. At its second session¹³⁰ the mandate of the Commission was expanded to include any other matter concerning human rights not covered in the previous resolution. Its mandate expanded further over time allowing the Commission to respond to the whole range of human rights problems and to set standards governing the conduct of States. The Commission held its sixty-first session from 14 March to 22 April 2005 in Geneva.¹³¹

(ii) *Human Rights Council*

In 2005, during the World Summit held in September, the Heads of State and Government decided to establish a Human Rights Council that would replace the Commission on Human Rights.¹³² This decision was the outcome of negotiations on the proposal made on

¹²⁸ This section covers the resolutions adopted, if any, by the Security Council, the General Assembly and the Economic and Social Council. Other legal developments in human rights may be found under the sections in the present chapter entitled “Peace and security” and “Women”. The present section does not cover resolutions addressing human rights issues arising in particular States, nor does it cover in detail the legal activities of the Commission on Human Rights, the Subcommission for the Promotion and Protection of Human Rights, or the treaty bodies (namely, the Human Rights Committee, Committee on Economic, Social and Cultural Rights, Committee on the Elimination of Racial Discrimination, Committee on the Elimination of Discrimination Against Women, Committee Against Torture, Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families). Detailed information and documents relating to human rights are available on the website of the Office of the United Nations High Commissioner for Human Rights at <http://www.ohchr.org>, as well as in the reports of the respective bodies. For complete lists of signatories and States parties to international instruments relating to human rights that are deposited with the Secretary-General, see *Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2005* (United Nations publications, Sales No. 06.V.2 P, ST/LEG/SER.E/24), vol. I, chap. IV.

¹²⁹ Economic and Social Council resolution adopted on 16 February 1946 (E/20).

¹³⁰ Economic and Social Council resolution adopted on 21 June 1946 (E/56/Rev.1 and E/84, para. 4).

¹³¹ *Official Records of the Economic and Social Council 2005, Supplement No. 3 and corrigenda* (E/2005/23 and Corr.1 and 2).

¹³² General Assembly resolution 60/1 of 16 September 2005 on “2005 World Summit Outcome”. See also section 2 of the present chapter.

the matter by the Secretary-General in March 2005,¹³³ following the report of the High-level Panel on Threats, Challenges and Change.¹³⁴

(iii) *Subcommission for the Promotion and Protection of Human Rights*

The Subcommission for the Promotion and Protection of Human Rights was established by the Commission on Human Rights as its main subsidiary body during the first session of the Commission in 1947, and under the authority of the Economic and Social Council.¹³⁵ The Subcommission held its fifty-seventh session from 25 July to 12 August 2005 in Geneva.¹³⁶

(iv) *Human Rights Committee*

The Human Rights Committee was established under the International Covenant on Civil and Political Rights, 1966,¹³⁷ to monitor the implementation of the Covenant and its Optional Protocols in the territory of States parties. In 2005, the Committee held its eighty-third session from 14 March to 1 April in New York, and its eighty-fourth and eighty-fifth sessions from 11 to 29 July and from 17 October to 3 November, respectively, in Geneva.¹³⁸

(v) *Committee on Economic, Social and Cultural Rights*

The Committee on Economic, Social and Cultural Rights was established by the Economic and Social Council¹³⁹ in 1985 to monitor the implementation of the International Covenant on Economic, Social and Cultural Rights, 1966,¹⁴⁰ by its States parties. In 2005, the Committee held its thirty-fourth and thirty-fifth sessions from 25 April to 13 May and from 7 to 25 November, respectively, in Geneva.¹⁴¹

¹³³ In larger freedom: towards development, security and human rights for all, report of the Secretary-General (A/59/2005 and Add.1 (The addendum consists of an explanatory note by the Secretary-General on the establishment of the Human Rights Council)).

¹³⁴ Report of the High-level Panel on Threats, Challenges and Change, "A more secure world: our shared responsibility" (A/59/565).

¹³⁵ Economic and Social Council resolution 46 (IV) of 28 March 1947 (E/325).

¹³⁶ For the report of the Subcommission, see E/CN.4/2006/2-E/CN.4/Sub.2/2005/44.

¹³⁷ United Nations, *Treaty Series*, vol. 999, p. 171.

¹³⁸ The reports of the eighty-third and eighty-fourth sessions can be found in *Official Records of the General Assembly, Sixtieth Session, Supplement No. 40* (A/60/40, vols. I and II) and the report of the eighty-fifth session can be found in *ibid.*, *Sixty-first Session, Supplement No. 40* (A/61/40, vol. I and Corr.1 and vol. II).

¹³⁹ Economic and Social Council resolution 1985/17 of 28 May 1985.

¹⁴⁰ United Nations, *Treaty Series*, vol. 993, p. 3.

¹⁴¹ The reports of the thirty-fourth and thirty-fifth sessions can be found in *Official Records of the Economic and Social Council, 2006, Supplement No. 2* (E/2006/22-E/C.12/2005/12).

(vi) *Committee on the Elimination of Racial Discrimination*

The Committee on the Elimination of Racial Discrimination was established under the Convention on the Elimination of All Forms of Racial Discrimination, 1966,¹⁴² to monitor the implementation of this Convention by its States parties. In 2005, the Committee held its sixty-sixth and sixty-seventh sessions from 21 February to 11 March and from 2 to 19 August, respectively, in Geneva.¹⁴³

(vii) *Committee on the Elimination of Discrimination against Women*¹⁴⁴

The Committee on the Elimination of Discrimination against Women was established under the Convention on the Elimination of All Forms of Discrimination against Women, 1979,¹⁴⁵ to monitor the implementation of this Convention by its States parties. In 2005, the Committee held its thirty-second and thirty-third sessions from 10 to 28 January and from 5 to 22 July, respectively, in New York.¹⁴⁶

(viii) *Committee against Torture*

The Committee against Torture was established under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984,¹⁴⁷ to monitor the implementation of this Convention by its States parties. In 2005, the Committee held its thirty-fourth and thirty-fifth sessions from 2 to 20 May and from 7 to 25 November, respectively, in Geneva.¹⁴⁸

(ix) *Committee on the Rights of the Child*

The Committee on the Rights of the Child was established under the Convention on the Rights of the Child, 1989,¹⁴⁹ to monitor the implementation of this Convention by its States parties. In 2005, the Committee held its thirty-eighth, thirty-ninth, and fortieth sessions in Geneva, from 10 to 28 January, from 17 May to 3 June and from 12 to 30 September, respectively.¹⁵⁰

¹⁴² United Nations, *Treaty Series*, vol. 660, p. 195.

¹⁴³ The reports of the sixty-sixth and sixty-seventh sessions can be found in *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18 (A/60/18)*.

¹⁴⁴ All matters relating to human rights and women and the advancement of women are dealt with in section 7 entitled "Women" of the present chapter.

¹⁴⁵ United Nations, *Treaty Series*, vol. 1249, p. 13.

¹⁴⁶ The reports of the thirty-second and thirty-third sessions can be found in *Official Records of the General Assembly, Sixtieth Session, Supplement No. 38 (A/60/38)*.

¹⁴⁷ United Nations, *Treaty Series*, vol. 1465, p. 85.

¹⁴⁸ The reports of the thirty-fourth and thirty-fifth session can be found in *Official Records of the General Assembly, Sixtieth Session, Supplement No. 44 (A/60/44)* and *ibid.*, *Sixty-first Session, Supplement No. 44 (A/61/44)*, respectively.

¹⁴⁹ United Nations, *Treaty Series*, vol. 1577, p. 3.

¹⁵⁰ The reports of the thirty-eighth, thirty-ninth, and fortieth sessions can be found in documents CRC/C/146, CRC/C/150 and CRC/C/153, respectively.

(x) *Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families*

The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families was established under the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990,¹⁵¹ to monitor the implementation of this Convention by its States parties. In 2005, the Committee held its second and third sessions from 25 to 29 April and from 12 to 16 December, respectively, in Geneva.¹⁵²

(b) Racism, racial discrimination, xenophobia and related intolerance

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/143 entitled “Inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance”, in which it, *inter alia*, expressed concern over the ongoing glorification of the Nazi movement and the increase in the number of racist incidents in several countries and the rise of skinhead groups. It stressed that such practices fuelled contemporary forms of racism, racial discrimination and xenophobia. The Assembly emphasized the need to take measures to put an end to such practices.

On the same day, also on the recommendation of the Third Committee, the General Assembly adopted resolution 60/144 entitled “Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation and follow-up to the Durban Declaration and Programme of Action”, in which it, *inter alia*, stressed that States and international organizations had a responsibility to ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent or national or ethnic origin, and urged all States to rescind or refrain from all forms of racial profiling. Furthermore, the Assembly emphasized that it was the responsibility of States to adopt effective measures to combat criminal acts motivated by racism, including measures to ensure that such motivations were considered as an aggravating factor in sentencing. Finally, it also condemned all acts of racism in sporting events and urged all States and sporting associations and federations to adopt firm measures for the prevention of such acts and to impose severe penalties on their perpetrators. In this regard, the Assembly invited the Fédération Internationale de Football Association (FIFA), in connection with the 2006 and 2010 World Cups of football to be held, respectively, in Germany and in South Africa, to consider introducing a visible theme promoting non-racialism in football.

¹⁵¹ United Nations, *Treaty Series*, vol. 2220, p. 3.

¹⁵² The reports of the second and third sessions can be found in *Official Records of the General Assembly, Sixtieth Session, Supplement No. 48 (A/60/48)* and *ibid.*, *Sixty-first Session, Supplement No. 48 (A/61/48)*, respectively.

(c) Right to development¹⁵³

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/157 entitled “The right to development”. In the said resolution, the Assembly, *inter alia*, endorsed the agreed conclusions and recommendations adopted by the Working Group on the Right to Development at its sixth session,¹⁵⁴ and called for their full, immediate and effective and implementation. Furthermore, the Assembly reaffirmed the primary responsibility of States to create national and international conditions favourable to the realization of the right to development and stressed the need to strive for greater acceptance, operationalization and realization of the right to development at the international and national levels. It also recognized the important link between the international economic, commercial and financial spheres and the realization of the right to development. The Assembly stressed in this regard the need for good governance and for broadening the base of decision-making at the international level on issues of development concern and the need to fill organizational gaps, strengthen the United Nations system and other multilateral institutions, as well as strengthen and broaden the participation of developing countries and countries with economies in transition in international economic decision-making and norm-setting.

(d) Economic, social and cultural rights

(i) *Right to food*

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/165 on “The right to food”, in which, among other things, it reaffirmed the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger, so as to be able to fully develop and maintain their physical and mental capacities. The Assembly also stressed the importance of international development cooperation and assistance, in particular in emergency situations, such as natural and man-made disasters, diseases and pests, for the realization of the right to food and the achievement of sustainable food security, while recognizing that each country had the primary responsibility for ensuring the implementation of national programmes and strategies in this regard. Furthermore, the Assembly welcomed the adoption by the Council of the Food and Agriculture Organization of the United Nations of the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security,¹⁵⁵ which it considered represent a practical tool to promote the realization of the right to food for all, and thus provided an additional instrument in the attainment of internationally agreed development goals, including those contained in the Millennium Declaration.

¹⁵³ See also General Assembly resolution 60/1 of 16 September 2005 on “2005 World Summit Outcome” and section 2 of the present chapter.

¹⁵⁴ E/CN.4/2005/25, sect. III.

¹⁵⁵ Report of the Council of the Food and Agriculture Organization of the United Nations, 127th session, Rome, 22–27 November 2004 (CL 127/REP), appendix D. See also E/CN.4/2005/131.

(ii) *Human rights and cultural diversity*

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/167 on “Human rights and cultural diversity”. In the said resolution, the Assembly, among other things, affirmed the importance for all peoples and nations to hold, develop and preserve their cultural heritage and traditions in an atmosphere of mutual respect, and recognized the right of everyone to take part in cultural life and to enjoy the benefits of scientific progress. The Assembly also expressed its determination to prevent and mitigate cultural homogenization in the context of globalization, through increased intercultural exchange, and further recognized that respect for cultural diversity and the cultural rights of all enhanced cultural pluralism and advanced the application and enjoyment of universally accepted human rights throughout the world. Finally, it urged States to ensure that their political and legal systems reflected the multicultural diversity within their societies and avoided discrimination against specific sectors of society.

(e) **Civil and political rights**(i) *Religious intolerance*a. **General Assembly**

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/166 entitled “Elimination of all forms of intolerance and of discrimination based on religion or belief”, in which it took note of the work and the report of the Special Rapporteur on freedom of religion or belief¹⁵⁶ and recalled Commission on Human Rights resolution 2005/40 of 19 April 2005 on this item.¹⁵⁷ It further urged States, *inter alia*, (a) to ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience, religion and belief, including the provision of effective remedies in cases where these rights are violated; (b) to ensure that religious places, sites, shrines and religious symbols are fully respected and protected; (c) to review existing registration practices in order to ensure the right of all persons to manifest their religion or belief; (d) to ensure the right to worship or assemble in connection with a religion or belief and to establish and maintain places for these purposes and the right to write, issue and disseminate related publications in these areas; (e) to ensure that the freedom to establish and maintain religious, charitable or humanitarian institutions is fully respected and protected; (f) to ensure that no one within their jurisdiction is, because of their religion or belief, deprived of the right to life, liberty or security of person, subjected to torture or arbitrary arrest or detention; and (g) to ensure that all public officials and civil servants respect different religions and beliefs and do not discriminate on such grounds, and that all necessary and appropriate education or training is provided.

¹⁵⁶ See the report of the Special Rapporteur on Civil and Political Rights, including the Question of Religious Intolerance (E/CN.4/2005/61).

¹⁵⁷ See *Official Records of the Economic and Social Council, 2005, Supplement No. 3 and corrigenda* (E/2005/23 and Corr.1 and 2), chap. II, sect. A.

Furthermore, the Assembly urged States to step up their efforts, in conformity with international standards of human rights, to eliminate intolerance and discrimination based on religion or belief, including by taking all necessary and appropriate action to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by religious intolerance, with particular regard to religious minorities. In this regard, States were urged to devote particular attention to practices that violate the human rights of women and discriminate against women. The General Assembly also emphasized the importance of a continued and strengthened dialogue among and within religions or beliefs, including as encompassed in the dialogue among civilizations, and that equating any religion with terrorism should be avoided.

In the area of religious intolerance, the Assembly also adopted, on 3 November 2005 and without reference to a Main Committee, resolution 60/10, "Promotion of interreligious dialogue and cooperation for peace" and resolution 60/11, "Promotion of religious and cultural understanding, harmony and cooperation", and, on 16 December 2005, on the recommendation of the Third Committee, resolution 60/150 entitled "Combating defamation of religions".

b. Security Council

Similarly emphasizing the importance of dialogue and understanding among civilizations, the Security Council adopted resolution 1624 (2005) on 14 September 2005, in which it, *inter alia*, called upon all States to continue international efforts to enhance dialogue and broaden understanding among civilizations, in an effort to prevent the indiscriminate targeting of different religions and cultures, and to take all measures as may be necessary and appropriate in accordance with their obligations under international law, to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent the subversion of educational, cultural, and religious institutions by terrorists and their supporters.

(ii) *Torture and other cruel, inhuman or degrading treatment or punishment*

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/148 entitled "Torture and other cruel, inhuman or degrading treatment or punishment", in which it noted the interim report of the Special Rapporteur on this subject,¹⁵⁸ and encouraged him to continue to include proposals in his recommendations on the prevention and investigation of torture and other cruel, inhuman or degrading treatment or punishment, including its gender-based manifestations. The Assembly also urged States to ensure that any statement that was established to have been made as a result of torture should not be invoked as evidence in proceedings, and that States do not expel, return or extradite a person to another State where there were substantial grounds for believing that the person would be in danger of being tortured. The Assembly also called upon States to take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export and use of equipment that is specifically designed to inflict torture. Finally, the Assembly further urged States that had not yet done so to become parties to the Convention against Torture

¹⁵⁸ A/60/316.

and Other Cruel, Inhuman or Degrading Treatment or Punishment as a matter of priority and to comply strictly with their obligations thereunder.

(iii) *Enforced or involuntary disappearances*

On 25 July 2005, the Economic and Social Council adopted decision 2005/262, in which it took note of Commission on Human Rights resolution 2005/27 of 19 April 2005 entitled “Enforced involuntary disappearances”,¹⁵⁹ and approved the Commission’s request that the Intersessional Open-ended Working Group to elaborate a draft legally binding normative instrument for the protection of all persons from enforced disappearance meet for a period of 10 days in one formal session before the end of 2005 with a view to the completion of its work and report to the Commission at its sixty-second session.¹⁶⁰

(iv) *Independence of the judiciary, administration of justice, and impunity*

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/159 entitled “Human rights in the administration of justice”, in which, among other things, it invited Governments to provide for training in human rights in the administration of justice, including juvenile justice, to all judges, lawyers, prosecutors and law enforcement workers. It further appealed to Governments to include in their national development plans the administration of justice as an integral part of the development process and to allocate adequate resources for the provision of legal-aid services with a view to promote and protect human rights.

(f) **Rights of the child**

(i) *General Assembly*

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/141 on “The girl child”, in which it, *inter alia*, urged all States to take all necessary measures and to institute legal reforms to ensure the full and equal enjoyment by the girl child of all human rights and fundamental freedoms, and to take effective action against violations of those rights and freedoms. The Assembly also urged States to enact and strictly enforce laws to ensure that marriage was entered into only with the free and full consent of the intending spouses, and recommended that laws concerning the minimum legal age of consent and for marriage be enacted and strictly enforced. It also urged all States to enact and enforce legislation to protect girls from all forms of violence and exploitation, including female infanticide and prenatal sex selection, female genital mutilation, rape and other kind of abuses. Finally, the Assembly urged all States and the interna-

¹⁵⁹ *Official Records of the Economic and Social Council, 2005, Supplement No. 3 and corrigenda (E/2005/23 and Corr.1 and 2 (Part I)), chap. II. A.*

¹⁶⁰ The Intersessional Open-ended Working Group held its fourth and fifth sessions from 31 January to 11 February 2005 and from 12 to 23 September 2005, respectively, in Geneva, and transmitted the draft international convention for the protection of all persons from enforced disappearance to the Commission on Human Rights, for approval by the General Assembly (E/CN.4/2006/57). For the discussions at the fourth session, see E/CN.4/2005/66.

tional community to respect, protect and promote the rights of the child, taking into account the particular vulnerabilities of the girl child in conflict situations.

On 23 December 2005, the General Assembly adopted, also on the recommendation of the Third Committee, resolution 60/231 on the “Rights of the child”, in which it, *inter alia*, urged States that had not yet done so to become parties to the Convention on the Rights of the Child and the Optional Protocols thereto,¹⁶¹ and to implement them fully by putting in place effective national legislation. It also urged States to intensify their efforts to preserve the child’s identity, including nationality and family relations, to address cases of international parental child abduction and to take all necessary measures to prevent and combat illegal adoptions. Further, the Assembly urged States to end impunity for perpetrators of crimes against children, investigate and prosecute all acts of violence and impose appropriate penalties. It also called upon all States to translate into concrete action their commitment to the progressive and effective elimination of child labour that is likely to be hazardous or harmful, and to promote education. Finally, any recruitment or use of children in armed conflicts was strongly condemned.

(ii) Security Council

On 26 July 2005, the Security Council adopted resolution 1612 (2005), in which it strongly condemned the recruitment and use of child soldiers by parties to armed conflicts in violation of their international obligations. It requested the Secretary-General to implement without delay the action plan he presented in his report on “Children and armed conflict”¹⁶² to establish a monitoring and reporting mechanism on children and armed conflicts. It also decided to establish a working group of the Security Council to review the reports of the said mechanism, as well as the progress in the development and implementation of the action plans called for in paragraph 5 (a) of its resolution 1539 (2004).¹⁶³ Finally, the Council welcomed the efforts undertaken by United Nations peacekeeping operations to implement the Secretary-General’s zero tolerance policy on sexual exploitation and abuse and decided to continue including specific provisions for the protection of children in the mandates of United Nations peacekeeping operations, including the deployment, on a case-by-case basis, of child-protection advisers.

(g) Persons with disabilities

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/131 entitled “Implementation of the World Programme of Action concerning Disabled Persons: realizing the Millennium Development Goals for persons with disabilities”. In the said resolution, the Assembly took note of the report

¹⁶¹ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000, United Nations, *Treaty Series*, vol. 2173, p. 222 and Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2000, United Nations, *Treaty Series*, vol. 2171, p. 227.

¹⁶² A/59/695-S/2005/72.

¹⁶³ In paragraph 5 (a), parties mentioned in the 2004 report of the Secretary-General on this item (A/58/546-S/2003/1053) were called upon to prepare concrete time-bound action plans to halt recruitment and use of children in violation of the international obligations applicable to them.

of the Secretary-General on this subject,¹⁶⁴ urged Governments and intergovernmental and non-governmental organizations to promote effective measures for the prevention of disability and the provision of appropriate habilitation and rehabilitation services for persons with disabilities, in a manner respectful of the dignity and integrity of persons with disabilities. It also demanded providing special protection to persons with disabilities from marginalized sectors of society, who may be vulnerable to multiple, intersecting or aggravating forms of discrimination.

On 23 December 2005, also on the recommendation of the Third Committee, the General Assembly adopted resolution 60/232 entitled “Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities”, in which it welcomed the reports of the said Committee on its fifth and sixth sessions, respectively.¹⁶⁵ In this context, the Assembly decided that the Ad Hoc Committee should hold two sessions in 2006, from 16 January to 3 February, in order to achieve a complete reading of the draft text of a convention prepared by the Chairman of the Ad Hoc Committee, and from 7 to 18 August.

(h) Migrants workers¹⁶⁶

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/169 on the “Protection of migrants”, in which it, *inter alia*, called upon States to consider reviewing and revising immigration policies with a view to eliminating all discriminatory practices against migrants and their families and adopting effective action to create conditions that foster greater harmony, tolerance and respect within societies. It also requested States to promote and protect the human rights and fundamental freedoms of all migrants, regardless of their immigration status, especially those of women and children. The Assembly further reaffirmed the duties of States parties to ensure full respect for and observance of the Vienna Convention on Consular Relations, 1963,¹⁶⁷ with regard to the rights of foreign nationals, regardless of their immigration status. Finally, it called upon States to facilitate family reunification in an expeditious and effective manner, as such reunification has a positive effect on the integration of migrants. Moreover, States were encouraged to remove obstacles that may prevent the safe, unrestricted and expeditious transfer of earnings, assets and pensions of migrants to their country of origin.

On the same day, and also on the recommendation of the Third Committee, the General Assembly adopted resolution 60/139 on “Violence against women migrant workers”.¹⁶⁸

¹⁶⁴ Implementation of the World Programme of Action concerning Disabled Persons: towards a society for all in the twenty-first century (A/60/290).

¹⁶⁵ A/AC.265/2005/2 and A/60/266.

¹⁶⁶ See also General Assembly resolution 60/1 of 16 September 2005 on “2005 World Summit Outcome” and section 2 of the present chapter.

¹⁶⁷ United Nations, *Treaty Series*, vol. 596, p. 261.

¹⁶⁸ Resolution 60/139 is highlighted in section 7 of the present chapter, dealing with “Women”.

(i) Minorities

With regard to the rights of minorities, on 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/160 entitled “Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities”, in which it took note of the report of the Secretary-General on the matter.¹⁶⁹

In addition, the Assembly urged States and the international community to promote and protect the rights of persons belonging to such minorities, as set out in the Declaration.¹⁷⁰ The measures envisaged for this purpose included the encouragement of conditions for the promotion of their identity, the provision of adequate education and the facilitation of their participation in all aspects of the political, economic, social, religious and cultural life of society and in the economic progress and development of their country, without discrimination. The Assembly further urged States to take all necessary constitutional, legislative, administrative and other measures to promote and give effect to the Declaration, and called upon them to take **all appropriate measures to protect the cultural and religious sites of national or ethnic, religious and linguistic minorities.**

(j) Right to self-determination

With regard to the right to self-determination, on 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/145 entitled “Universal realization of the right of peoples to self-determination”, in which it took note of the report of the Secretary-General on this item.¹⁷¹ The Assembly further reaffirmed that the universal realization of the right of all peoples, including those under colonial, foreign and alien domination, to self-determination is a fundamental condition for the effective guarantee and observance of human rights and for the preservation and promotion of such rights.

In addition, the General Assembly 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.

(k) Counter-terrorism and human rights

(i) *General Assembly*

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/158 entitled “Protection of human rights and fundamental freedoms while countering terrorism”, in which it reaffirmed that States must ensure that any measure taken to combat terrorism complied with their obligations under international law, in particular international human rights, refugee and humanitarian law. It further reaffirmed the obligation of States, under article 4 of the International Covenant on

¹⁶⁹ A/60/333.

¹⁷⁰ General Assembly resolution 47/135, annex.

¹⁷¹ A/60/268.

Civil and Political Rights, to respect certain rights as non-derogable in any circumstances. It also urged States to fully respect *non-refoulement* obligations under international refugee and human rights law, and to review, with full respect for those obligations, the validity of a refugee status decision, if credible and relevant evidence had come to light indicating that the person had committed any criminal acts falling under the exclusion clauses of international refugee law, including terrorist acts. The Assembly further welcomed the establishment by the Commission on Human Rights of the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism,¹⁷² and took note of the report of the independent expert on the topic,¹⁷³ as well as of the report of the Secretary-General.¹⁷⁴

(ii) *Security Council*

On 14 September 2005, the Security Council adopted resolution 1624 (2005), in which it stressed that States must ensure that any measures taken to prohibit by law and to prevent incitement to commit terrorist acts, to deny safe haven to persons that can be seriously considered to have committed such acts, or to implement other measures to strengthen security of their international borders, comply with all of their obligations under international law, in particular international human rights law, refugee law and humanitarian law.

(I) *International cooperation in the field of human rights*

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/156 entitled “Enhancement of international cooperation in the field of human rights”, in which it, *inter alia*, considered that such cooperation, in conformity with the purposes and principles set out in the Charter of the United Nations and international law, should make an effective and practical contribution to the urgent task of preventing violations of human rights and fundamental freedoms. It also reaffirmed that the promotion, protection and full realization of all human rights and fundamental freedoms should be guided by the principles of universality, non-selectivity, objectivity and transparency.

On the same day, the General Assembly also adopted, on the recommendation of the Third Committee, two resolutions relating to regional arrangements for the promotion of human rights.

(a) Resolution 60/151 on “Subregional Centre for Human Rights and Democracy in Central Africa”, in which the Assembly welcomed the Centre’s activities and requested the Secretary-General and the United Nations High Commissioner for Human Rights to provide additional funds and human resources to enable it to effectively respond to the

¹⁷² Commission on Human Rights, resolution 2005/80 of 21 April 2005 (*Official Records of the Economic and Social Council, 2005, Supplement No. 3 and corrigenda (E/2005/23 and Corr.1 and 2)*, chap. II, sect. A.

¹⁷³ Report of the independent expert on the protection of human rights and fundamental freedoms while countering terrorism, Robert K. Goldman (E/CN.4/2005/103).

¹⁷⁴ Protecting human rights and fundamental freedoms while countering terrorism, report of the Secretary-General (A/60/374).

growing needs in the promotion and protection of human rights and in developing a culture of democracy in this subregion.

(b) Resolution 60/153 entitled “Establishment of a United Nations human rights training and documentation centre for South-West Asia and the Arab region”. In this resolution, the Assembly welcomed the initiative of the Government of Qatar to host a United Nations human rights training and documentation centre, which would be under the supervision of the Office of the High Commissioner. The Assembly further requested the Secretary-General and the Office of the High Commissioner to give their support to the establishment of such a United Nations human rights training and documentation centre, to make available the necessary resources for this purpose and to conclude a host country agreement regarding its establishment.

(m) Miscellaneous

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/147 entitled “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”,¹⁷⁵ in which it adopted the said Principles and Guidelines, and recommended that States take them into account and promote their respect, in particular within their executive, legislative and judiciary bodies.

On the same date, the Assembly also adopted, on the recommendation of the Third Committee, resolutions 60/149 on the “International Covenants on Human Rights”, 60/152 on “Globalization and its impact on the full enjoyment of all human rights”, 60/154 on “National institutions for the promotion and protection of human rights”, 60/155 on “Human rights and unilateral coercive measures”, 60/161 on “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”, 60/162 on “Strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization” and 60/163 on “Promotion of peace as a vital requirement for the full enjoyment of all human rights by all”.

¹⁷⁵ The “Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law” have been adopted by the Commission on Human Rights, in its resolution 2005/35 of 19 April 2005 and by the Economic and Social Council on 25 July 2005, in its resolution 2005/30.

7. Women^{176,177}

(a) Commission on the Status of Women

The Commission on the Status of Women was established by the Economic and Social Council in its resolution 11 (II) of 21 June 1946 as a functional to deal with questions relating to gender equality and the advancement of women. It is the principal global policy-making body in this field and prepares recommendations and reports to the Council on the promotion of women's rights in political, economic, civil, social and educational fields.

The Commission held its forty-ninth session from 28 February to 11 and 22 March 2005 in New York. In 2005, the Commission was mandated, in the multi-year programme of work, to review and appraise the implementation of the Beijing Declaration and Platform for Action adopted at the Fourth World Conference on Women (Beijing, 1995),¹⁷⁸ and the outcome of the twenty-third special session of the General Assembly (2000).¹⁷⁹ In this context, the Commission considered two themes: "Review of the implementation of the Beijing Platform for Action and the outcome documents of the twenty-third special session of the General Assembly"; and "Current challenges and forward-looking strategies for the advancement and empowerment of women and girls".¹⁸⁰

During its forty-ninth session, the Commission adopted a number of resolutions to be brought to the attention of the Economic and Social Council, of which two are highlighted below.

In resolution 49/2, entitled "Eliminating demand for trafficked women and girls or all forms of exploitation", the Commission, *inter alia*, called upon Governments to take appropriate measures: to address the root factors, as well as external factors that encourage trafficking in women and girls, including by strengthening existing legislation with a view to providing better protection of the rights of women and girls and to punishing perpetrators, through both criminal and civil measures; to criminalize trafficking in persons, especially women and girls, in all its forms and penalize traffickers and intermediaries, while ensuring protection and assistance to the victims thereof; to adopt or strengthen and enforce legislative or other measures, including through bilateral and multilateral cooperation, to deter exploiters and eliminate the demand that fosters trafficking of women and girls for all forms of exploitation; and to conclude bilateral, subregional, regional and international agreements to address the problem of trafficking in persons, especially women and girls, to enhance law enforcement and judicial cooperation, and specific measures aimed at reducing demand

¹⁷⁶ See also General Assembly resolution 60/1 of 16 September 2005 on "2005 World Summit Outcome" and section 2 of the present chapter.

¹⁷⁷ For complete lists of signatories and States parties to the international instruments relating to women that are deposited with the Secretary-General, see the chapters relating to human rights and the status of women in *Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2005* (United Nations publications, Sales No. 06.V.2 P, ST/LEG/SER.E/24), vol. I, chap. IV, and vol. II, chap. XVI.

¹⁷⁸ A/CONF.177/20.

¹⁷⁹ General Assembly resolution S-23/2.

¹⁸⁰ For the report on the forty-ninth session, see *Official Records of the Economic and Social Council, 2005, Supplement No. 7* and corrigendum (E/2005/27-E/CN.6/2005/11 and Corr.1).

In resolution 49/3, entitled “Advisability of the appointment of a special rapporteur on laws that discriminate against women”, the Commission noted the concerns expressed that legislative and regulatory gaps, as well as lack of implementation and enforcement of laws and regulations, perpetuate *de jure* as well as *de facto* inequality and discrimination against women. In this context, it decided to consider at its fiftieth session the advisability of the appointment of a special rapporteur on laws that discriminate against women, and requested the Secretary-General to report to the Commission on the Status of Women on the implications of the creation of such a position.

(b) Economic and Social Council

On 21 and 26 July 2005, the Economic and Social Council adopted, on the recommendation of the Commission on the Status of Women, resolution 2005/8 entitled “Situation of women and girls in Afghanistan” and resolution 2005/43 on the “Situation of and assistance to Palestinian women”, respectively.

(c) General Assembly

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, five resolutions dealing with the rights of women,¹⁸¹ of which two are highlighted below.

In its resolution 60/139, entitled “Violence against women migrant workers”, the General Assembly took note of the report of the Secretary-General on violence against women¹⁸² and the reports of the Special Rapporteur on the human rights of migrants¹⁸³ and the Special Rapporteur on violence against women, its causes and consequences,¹⁸⁴ with regard to violence against women migrant workers. It called upon all Governments to incorporate a gender perspective in all policies on international migration, including, *inter alia*, for the protection of migrant women from violence, discrimination, exploitation and abuse. Furthermore, the Assembly also urged concerned Governments, in particular those of the countries of origin and destination, to strengthen further their national efforts to protect and promote the rights and welfare of women migrant workers. In the same resolution, it further called upon concerned Governments, in particular those of the countries of origin and destination, to put in place penal and criminal sanctions to punish perpetrators of violence against women migrant workers and encouraged them to adopt measures or strengthen existing ones that protect the human rights of women migrant workers, regardless of their immigration status.

In its resolution 60/140, entitled “Follow-up to the Fourth World Conference on Women and full implementation of the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly”, the Assembly,

¹⁸¹ General Assembly resolutions 60/136, 60/137, 60/138, 60/139 and 60/140.

¹⁸² A/60/137 and Corr.1.

¹⁸³ E/CN.4/2005/85 and Corr.1 and Add.1–4.

¹⁸⁴ E/CN.4/2005/72 and Corr.1 and Add.1 and Add.1/Corr.1 and Add.2–5.

inter alia, welcomed the report of the Secretary-General on this item,¹⁸⁵ and recognized that the implementation of the Beijing Declaration and Platform for Action and the fulfilment of the obligations under the Convention on the Elimination of All Forms of Discrimination against Women¹⁸⁶ were mutually reinforcing in achieving gender equality and the empowerment of women. Further, it reaffirmed that States had an obligation to exercise due diligence to prevent violence against women and girls, provide protection to the victims and investigate, prosecute and punish the perpetrators of violence against women and girls, and that failure to do so violated and impaired or nullified the enjoyment of their human rights and fundamental freedoms.

In addition, on 23 December 2005, also on the recommendation of the Third Committee, the Assembly adopted resolution 60/230 on the Convention on the Elimination of All Forms of Discrimination against Women. In this resolution, the Assembly decided to authorize the Committee on the Elimination of Discrimination against Women to hold three annual sessions of three weeks each, with a one-week pre-sessional working group for each session, effective from January 2006 as a temporary measure, and to continue to authorize two annual sessions of the Working Group on Communications under the Optional Protocol to the Convention, It also authorized the Committee to meet on an exceptional and temporary basis in 2006 and 2007 for up to seven days in parallel working groups during its third annual session in 2006 and its first and third annual sessions in 2007 for the purpose of considering reports of States parties submitted under article 18 of the Convention.

8. Humanitarian matters

(a) Economic and Social Council

On 15 July 2005, the Economic and Social Council adopted resolution 2005/4 entitled “Strengthening of the coordination of emergency humanitarian assistance of the United Nations”, in which it took note of the report of the Secretary-General on this item.¹⁸⁷ It also took note of the report of the Secretary-General on strengthening emergency relief, rehabilitation, reconstruction, recovery and prevention in the aftermath of the Indian Ocean tsunami disaster,¹⁸⁸ as well as of the report of the Secretary-General on the transition from relief to development.¹⁸⁹

In addition, the Council recommended the General Assembly to request the Secretary-General to ensure that United Nations humanitarian organizations were working with the Department of Peacekeeping Operations of the Secretariat so as to better ensure that humanitarian issues were accounted for from the earliest stages of planning and designing of United Nations multidimensional integrated peacekeeping operations, and that the mandates of such operations continued to respect the need for their humanitarian activities to be carried out in accordance with humanitarian principles.

¹⁸⁵ A/60/170.

¹⁸⁶ United Nations, *Treaty Series*, vol. 1249, p. 13.

¹⁸⁷ A/60/87-E/2005/78.

¹⁸⁸ A/60/86-E/2005/77.

¹⁸⁹ A/60/89-E/2005/79.

(b) General Assembly

On 15 December 2005, the General Assembly adopted, without reference to a Main Committee, two resolutions relating to humanitarian matters.

a In resolution 60/123,, entitled “Safety and security of humanitarian personnel and protection of United Nations personnel”, the Assembly welcomed the report of the Secretary-General on this item.¹⁹⁰ It also strongly urged all States to take the necessary measures to ensure the safety and security of humanitarian personnel and United Nations and associated personnel and to respect and ensure respect for the inviolability of United Nations premises, which were essential to the continuation and successful implementation of United Nations operations. Furthermore, it called upon all Governments and parties in complex humanitarian emergencies, in particular in armed conflicts and in post-conflict situations, and in countries in which humanitarian personnel were operating, to cooperate fully with the United Nations and other humanitarian personnel. Finally, the Assembly called upon all other parties involved in armed conflicts to refrain from abducting humanitarian personnel, United Nations and associated personnel, or detaining them and to release speedily without harm or requirement of concession, any abductee or detainee.

b In resolution 60/125, entitled “International cooperation on humanitarian assistance in the field of natural disasters, from relief to development”, the General Assembly took note of the reports of the Secretary-General entitled “International cooperation on humanitarian assistance in the field of natural disasters, from relief to development”,¹⁹¹ “Strengthening of the coordination of emergency humanitarian assistance of the United Nations”,¹⁹² “Strengthening emergency relief, rehabilitation, reconstruction, recovery and prevention in the aftermath of the Indian Ocean tsunami disaster”,¹⁹³ “The transition from relief to development”,¹⁹⁴ and “Improvement of the Central Emergency Revolving Fund”.¹⁹⁵ The Assembly also called upon States to fully implement the “Hyogo Declaration”¹⁹⁶ and the “Hyogo Framework of Action 2005–2015: Building the Resilience of Nations and Communities to Disasters”,¹⁹⁷ in particular the commitments related to assistance for developing countries that are prone to natural disasters and for disaster-stricken States in the transition phase towards sustainable physical, social and economic recovery, for risk-reduction activities in post-disaster recovery and for rehabilitation processes.

¹⁹⁰ A/60/223 and Corr.1.

¹⁹¹ A/60/227.

¹⁹² A/60/87-E/2005/78.

¹⁹³ A/60/86-E/2005/77.

¹⁹⁴ A/60/89-E/2005/79.

¹⁹⁵ A/60/432.

¹⁹⁶ A/CONF.206/6 and Corr.1, chap. I, resolution 1.

¹⁹⁷ *Ibid.*, resolution 2.

9. Environment¹⁹⁸

On 22 December 2005, the General Assembly adopted, on the recommendation of the Second Committee, several resolutions related to the environment, of which three are highlighted below.

(a) Resolution 60/193 entitled “Implementation of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development”. In this resolution, the General Assembly noted that the Commission on Sustainable Development at its thirteenth session¹⁹⁹ adopted policy decisions on options and practical measures aimed at accelerating progress in implementation in the areas of water, sanitation and human settlements.²⁰⁰ In addition, the Assembly called for the effective realisation of the commitments, programmes and time-bound targets adopted at the World Summit on Sustainable Development and for the fulfilment of the provisions relating to such means, as contained in the Johannesburg Plan of Implementation.²⁰¹ Furthermore, it also took note of the report of the Secretary-General on the activities undertaken in the implementation of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development.²⁰²

(b) Resolution 60/194 entitled “Follow-up to and Implementation of the Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States”. In this resolution, the Assembly took note of the Secretary-General’s report on the matter,²⁰³ and urged Governments and all relevant international and regional organizations, United Nations funds, programmes, specialized agencies and regional commissions, international financial institutions and the Global Environmental Facility, to take timely action for the implementation of and follow-up to the Mauritius Declaration²⁰⁴ and the Mauritius Strategy for Implementation.²⁰⁵

(c) Resolution 60/201 entitled “Implementation of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa.” In this resolution, the Assembly, *inter alia*, took note of the report of the Secretary-General on the implementation of the said Convention.²⁰⁶ It further expressed its resolution to address causes of desertification and land degradation,

¹⁹⁸ See also General Assembly resolution 60/1 of 16 September 2005 on “2005 World Summit Outcome” and section 2 of the present chapter.

¹⁹⁹ For the report of the Commission, see *Official Records of the Economic and Social Council, 2005, Supplement No. 9 (E/2005/29)*.

²⁰⁰ *Ibid.*, chap. I, sect. C, resolution 13/1.

²⁰¹ *Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August–4 September 2002* (United Nations publication, Sales No. E.03.II.A.1 and corrigendum), chap. I, resolution 2, annex.

²⁰² A/60/261 and Corr. 1.

²⁰³ A/60/401.

²⁰⁴ *Report of the International Meeting to Review the Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States, Port Louis, Mauritius, 10–14 January 2005* (United Nations publication, Sales No. E.05.II.A.4 and corrigendum), chap. I, resolution I, annex I.

²⁰⁵ *Ibid.*, annex II.

²⁰⁶ A/60/171, sect. II.

as well as poverty resulting from land degradation, through, *inter alia*, the mobilization of adequate and predictable financial resources, the transfer of technology and capacity-building at all levels.

On the same date, the General Assembly also adopted on the recommendation of the Second Committee, among others, resolution 60/190 on “Global Code of Ethics for Tourism”, resolution 60/197 on “Protection of global climate for present and future generations of mankind”, resolution 60/198 on “Sustainable Mountain Development”, resolution 60/199 on “Promotion of new and renewable sources of energy, including the implementation of the World Solar Programme”, and resolution 60/202 on the “Convention on Biological Diversity”.

10. Law of the Sea

(a) Reports of the Secretary-General²⁰⁷

The Secretary-General, in his reports to the General Assembly at its sixtieth and sixty-first sessions under the agenda item entitled “Oceans and the Law of the Sea”, provide an overview of developments relating to the implementation of the United Nations Convention on the Law of the Sea, 1982, (Convention)²⁰⁸ and the work of the Organization, its specialized agencies and other institutions in the field of ocean affairs and the law of the sea during the period under review. The reports contain updates on the status of the Convention and its implementing Agreements, as well as on declarations and statements made by States under articles 287, 298 and 310 of the Convention. In relation to the topic of maritime space, the reports provide an overview of State practice, maritime claims and delimitation of maritime zones.

The reports also outline the work carried out in 2005 by the three institutions established by the Convention, namely, the International Seabed Authority (ISA), the International Tribunal for the Law of the Sea²⁰⁹ and the Commission on the Limits of the Continental Shelf (CLCS). ISA held its eleventh session from 15 to 26 August 2006,²¹⁰ during which it continued its work on the Regulations on prospecting and exploration for polymetallic sulphides and cobalt-rich ferromanganese crusts.²¹¹ CLCS held its fifteenth and sixteenth sessions from 4 to 22 April and 29 August to 16 September 2005, respectively,²¹² during which it continued the examination of the submission made by Brazil, and began the consideration of the submissions made, respectively, by Australia and Ireland, regarding the outer limits of their respective continental shelves.

²⁰⁷ A/60/63 and Add.1 and 2. Information contained in the reports of the Secretary-General on the law of the sea with regard to the work of other related international organizations within the United Nations system are not covered in this chapter, see chapter III B below.

²⁰⁸ United Nations, *Treaty Series*, vol. 1833, p. 3.

²⁰⁹ For the work of the Tribunal, see chapter VII below.

²¹⁰ See the Statement of the President on the work of the Assembly at the eleventh session (ISBA/11/A/11).

²¹¹ See the Statement of the President on the work of the Council at the eleventh session (ISBA/11/C/11), paras. 13 to 17.

²¹² For more information on the fifteenth and sixteenth sessions of the CLCS, see CLCS/44 and CLCS/48, respectively.

At its fifteenth session, the CLCS took note of the legal opinion of the Legal Counsel of the United Nations on the following question: “Is it permissible, under the United Nations Convention on the Law of the Sea and the rules of procedure of the Commission, for a coastal State, which has made a submission to the Commission in accordance with article 76 of the Convention, to provide to the Commission in the course of the examination by it of the submission, additional material and information relating to the limits of its continental shelf or substantial part thereof, which constitute a significant departure from the original limits and formulae lines that were given due publicity by the Secretary-General of the United Nations in accordance with rule 50 of the rules of procedure of the Commission?” The CLCS decided to act in accordance with the legal opinion.²¹³

At its sixteenth session, the Commission adopted some amendments to its rules of procedure.²¹⁴

In his reports, the Secretary-General also provided information on the training courses which the Division for Ocean Affairs and the Law of the Sea of the United Nations Office of Legal Affairs began to deliver in 2005, in order to promote and facilitate compliance with article 76 of the Convention on the part of developing States that may have an extended continental shelf. In 2005, training courses were organized in Fiji, in Sri Lanka for Indian Ocean developing countries, and in Ghana for developing States of the African region bordering the eastern Atlantic.

With regard to climate change, the Secretary-General reported on the outcome of the International Meeting to Review the Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States, held in Mauritius. The Meeting unanimously adopted a proactive strategy to further implement the 1994 Barbados Programme of Action, called the **Mauritius Strategy for Implementation**,²¹⁵ and a political declaration, the Mauritius Declaration.²¹⁶

The sixth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, held from 6 to 10 June 2005, organized its discussions about fisheries and their contribution to sustainable development, as well as about the issue of marine debris.²¹⁷ The Consultative Process agreed on a number of elements concerning this subject, to be suggested to the General Assembly for its consideration. Nevertheless, in light of the fact that not all elements under consideration by the Consultative Process were finalized, only proposed elements relating to marine debris and cooperation and coordination were forwarded at this stage.²¹⁸ The sixth meeting marked the end of the second three-year cycle of the Informal Consultative Process.

²¹³ See section 6 of chapter VI below.

²¹⁴ See CLCS/48, para. 44.

²¹⁵ *Report of the International Meeting to Review the Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States, Port Louis, Mauritius, 10–14 January 2005* (United Nations publication, Sales No. E.05.II.A.4 and corrigendum), chap. I, resolution I, annex II.

²¹⁶ *Ibid.*, annex I.

²¹⁷ For more information on the work of the Open-ended Informal Consultative Process on Oceans and the Law of the Sea, see A/60/99.

²¹⁸ *Ibid.*, Part A, sections I and II.

Still in 2005, the Secretary-General transmitted a report to the General Assembly on issues relating to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction.²¹⁹ This report contained information on scientific, technical, economic, legal, environmental, socio-economic and other aspects of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. It also provided an overview on past and present activities of the Organization and other relevant international organizations in this area.

The Secretary-General also issued his annual report on Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks and its related instruments,²²⁰ providing an overview of the state of implementation of the Agreement and other international fishery instruments.

(b) General Assembly

On 25 November 2005, the General Assembly, without reference to a Main Committee, adopted resolution 60/30 entitled “Oceans and the law of the sea”. The General Assembly, after reviewing for the second time the effectiveness and utility of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea decided, *inter alia*, to continue with the Process for the following three years and further review its effectiveness and utility at its sixty-third session.

The Assembly also decided that the Ad Hoc Open-ended Informal Working Group to study specified issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, which had been established by paragraph 73 of resolution 59/24, should be open to all States Members of the United Nations and all parties to the Convention, with others invited as observers in accordance with past practice of the United Nations. It also decided that the meeting of the Working Group should be coordinated by two co-chairpersons, who would be appointed by the President of the General Assembly in consultation with Member States and taking into account the need for representation from developed and developing countries.

Regarding the marine environment, the General Assembly endorsed the conclusions of the second International Workshop on the regular process for global reporting and assessment of the state of the marine environment, including socio-economic aspects,²²¹ and decided to launch a start-up phase, the “assessment of assessments”, to be completed within two years, as a preparatory stage towards the establishment of the regular process. For this purpose, the General Assembly established an organizational arrangement that included an *ad hoc* steering group to oversee the execution of the “assessment of assessments”, two United Nations agencies, the United Nations Environment Programme and

²¹⁹ A/60/63/Add.1. The report was also meant to assist the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction established by the General Assembly and in preparing its agenda. See subsection (b) on the “General Assembly”, below.

²²⁰ A/60/189.

²²¹ A/60/91, annex.

the Intergovernmental Oceanographic Commission, to co-lead the process, and a group of experts.

Also on 25 November 2005, the General Assembly further adopted, without reference to a Main Committee, resolution 60/31 entitled “Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments”. In this resolution, the General Assembly, *inter alia*, reaffirmed paragraph 16 of resolution 59/25 concerning the convening of a review conference with a view to assessing the effectiveness of the Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks, to be held in New York from 22 to 26 May 2006, and requested the Secretary-General to undertake several tasks in the preparation of such a conference. It further welcomed the adoption of the Code of Safety for Fishermen and Fishing Vessels as revised by the Food and Agriculture Organization of the United Nations, the International Labour Organization and the International Maritime Organization.²²²

11. Crime prevention and criminal justice²²³

(a) International instruments²²⁴

The United Nations Convention against Corruption,²²⁵ adopted by the General Assembly in its resolution 58/4 of 31 October 2003, entered into force on 14 December 2005.

(b) Commission on Crime Prevention and Criminal Justice

The Commission on Crime Prevention and Criminal Justice was established by the Economic and Social Council in its resolution 1992/1 of 6 February 1992 as a functional commission to deal with a broad range of policy matters in this field, including combating national and transnational crime, including organized crime, economic crime and money laundering, promoting the role of criminal law in environmental protection, crime prevention in urban areas, including juvenile crime and violence, as well as improving

²²² *Code of safety for fishermen and fishing vessels: 2005*—2nd ed, London, International Maritime Organization.

²²³ This section covers the sessions of the General Assembly, the Economic and Social Council and the Commission on Crime Prevention and Criminal Justice. Selected resolutions and decisions are highlighted. Resolutions recommending the adoption of subsequent resolutions by another organ are not covered. For detailed information and documents regarding this topic generally, see the website of the United Nations Office on Drugs and Crimes at <http://www.unodc.org>. See also General Assembly resolution 60/1 of 16 September 2005 on “2005 World Summit Outcome” and section 2 of the present chapter.

²²⁴ For complete lists of signatories and States parties to the international instruments relating to penal matters that are deposited with the Secretary-General, see *Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2005* (United Nations publications, Sales No. 06.V.2 P, ST/LEG/SER.E/24), vol. II, chap. XVIII.

²²⁵ United Nations, *Treaty Series*, vol. 2349, p. 41.

the efficiency and fairness of criminal justice administration systems. Aspects of these principal themes are selected for discussion at each of its annual sessions. It also provides substantive and organizational direction for the quinquennial United Nations Congress on Crime Prevention and Criminal Justice.

The fourteenth session of the Commission on Crime Prevention and Criminal Justice was held in Vienna from 23 to 27 May 2005.²²⁶ During the session, the Commission provided policy guidance and direction to the United Nations Office on Drugs and Crime (UNODC) and held the following thematic discussion: Consideration of the conclusions and recommendations of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice.

(c) Eleventh United Nations Congress for Crime Prevention and Criminal Justice

The Eleventh United Nations Congress for Crime Prevention and Criminal Justice took place in Bangkok, Thailand, from 18 to 25 April 2005. The main theme for the Congress was “Synergies and responses: strategic alliances in crime prevention and criminal justice”.²²⁷ There were five main items on the Congress’ agenda, namely: (i) effective measures to combat transnational organized crime; (ii) international cooperation against terrorism and links between terrorism and other criminal activities in the context of the work of UNODC; (iii) corruption: threats and trends in the twenty-first century; (iv) economic and financial crimes: challenges to sustainable development; and (v) making standards work: fifty years of standard-setting in crime prevention and criminal justice. Six technical workshops were held on the following subjects: (i) enhancing international law enforcement cooperation, including extradition measures; (ii) enhancing criminal justice reform, including restorative justice; (iii) strategies and best practices for crime prevention, in particular in relation to urban crime and youth at risk; (iv) measures to combat terrorism, with reference to the relevant international conventions and protocols; (v) measures to combat economic crime, including money-laundering; and (vi) measures to combat computer-related crime.

In addition, a high-level segment was held during the last three days of the Congress, from 23 to 25 April 2005. On the last day, the Congress adopted the “Bangkok Declaration” entitled “Synergies and responses: strategic alliances in crime prevention and criminal justice”,²²⁸ in which matters such as the expansion and dimensions of transnational organized crime, including illicit drug trafficking, money-laundering, trafficking in persons, smuggling of migrants, illegal arms trafficking and terrorism, and any existing links between them, were addressed.

²²⁶ For the report of the fourteenth session of the Commission, see *Official Records of the Economic and Social Council, 2005, Supplement No. 10 (E/2005/30)*.

²²⁷ For the report of the Eleventh Congress, see A/CONF.203/18.

²²⁸ *Ibid.*, chap. I, resolution 1.

(d) Economic and Social Council

On 22 July 2005, the Economic and Social Council adopted, on the recommendation of the Commission on Crime Prevention and Criminal Justice, several resolutions on this item.²²⁹

(a) Resolution 2005/14 entitled “Model bilateral agreement on the sharing of confiscated proceeds of crime or property covered by the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988”. In this resolution, the Council adopted the Model Bilateral Agreement as a useful model that could be of assistance to States interested in negotiating and concluding bilateral agreements to facilitate the sharing of proceeds of crime. The Council further stressed that the Model Bilateral Agreement would not prejudice the principles set forth in the United Nations Convention against Corruption or the development, at a later stage, of any appropriate mechanism to facilitate the implementation of that Convention. Finally, the Council invited Member States, in concluding agreements with other States in the area of sharing proceeds of crime, to take into account the Model Bilateral Agreement.

(b) In resolution 2005/15, entitled “Eleventh United Nations Congress on Crime Prevention and Criminal Justice”, the Council endorsed the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice,²³⁰ adopted at the high-level segment of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice. In addition, it invited Governments to take this Declaration into consideration in formulating legislation and policy directives and to make all efforts to implement its principles, bearing in mind their respective economic, social, legal and cultural specificities.

(c) In resolution 2005/16, entitled “Action against transnational organized crime: protection of witnesses”, the Council took note with appreciation of the report of the Secretary-General on the United Nations Convention against Transnational Organized Crime and the Protocols thereto.²³¹ It further requested the Secretary-General to pay special attention to the issue of the protection of witnesses within the framework of technical assistance activities. Finally, the Council also requested the Secretary-General to convene an open-ended intergovernmental group of experts to exchange experiences and put forward suggestions and recommendations with regard to protecting witnesses and encouraging them to collaborate in the judicial process.

(d) The Council further adopted resolution 2005/17 on “International cooperation in the fight against transnational organized crime”, in which it urged all States and relevant regional economic integration organizations to take all necessary measures to improve international cooperation in criminal matters, especially extradition and mutual legal assistance.

²²⁹ Resolutions 2005/14 to 2005/19 had been recommended by the Commission on Crime Prevention and Criminal Justice for adoption by the General Assembly. The Economic and Social Council adopted the said resolutions and decided not to forward them to the General Assembly. (See Economic and Social Council decision 2005/246).

²³⁰ A/CONF.203/18, chap. I, resolution 1.

²³¹ E/CN.15/2005/6.

(e) In resolution 2005/18 on “Action against corruption: assistance to States in capacity-building with a view to facilitating the entry into force and subsequent implementation of the United Nations Convention against Corruption”, the Council, *inter alia*, took note with appreciation of the report of the Secretary-General on the United Nations Convention against Corruption,²³² and urged Member States to promote a culture of integrity and accountability in both the public and private sector. It also called upon them to adopt measures to facilitate the recovery and return of assets that are consistent with the principles of the United Nations Convention against Corruption.

(f) In resolution 2005/19 on “Strengthening international cooperation and technical assistance in promoting the implementation of the universal conventions and protocols related to terrorism within the framework of the activities of the United Nations Office on Drugs and Crime”, the Council, *inter alia*, took note of the legislative assistance tools developed by UNODC, and requested UNODC to finalize the draft guide for legislative incorporation and implementation of the universal instruments against terrorism and to develop it further to serve as a training tool when providing assistance to States.

UNODC was further requested to intensify its efforts in providing Member States with technical assistance to strengthen international cooperation in preventing and combating terrorism by facilitating the implementation of the universal counter-terrorism instruments, in particular through training in the judicial and prosecutorial fields. The need to coordinate such work with the Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate was particularly emphasized.

In addition, the Economic and Social Council recognized the role of fair and effective criminal justice systems within the overall framework of the rule of law as an integral component of any strategy to counter terrorism. In this context, it requested UNODC to take into account in its technical assistance programme the elements necessary for capacity-building in order to strengthen criminal justice systems and the rule of law, to facilitate the effective implementation of the universal counter-terrorism instruments and relevant Security Council resolutions.

(g) In resolution 2005/20 on “Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime”, the Council adopted the said Guidelines as a useful framework that could assist Member States in enhancing the protection of child victims and witnesses in the criminal justice system.

Finally, the Council also adopted resolution 2005/21 entitled “Strengthening the technical cooperation capacity of the United Nations Crime Prevention and Criminal Justice Programme in the area of the rule of law and criminal justice reform”, resolution 2005/22 on “Action to promote effective crime prevention”, and resolution 2005/23 on “Strengthening reporting on crime”.

(e) General Assembly

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, two resolutions relating to crime prevention and criminal justice.

²³² E/CN.15/2005/9.

(a) Resolution 60/175 entitled “Strengthening the United Nations Crime Prevention and Criminal Justice Programme, in particular its technical cooperation capacity”. In this resolution, the Assembly welcomed the entry into force of the United Nations Convention against Corruption.

(b) Resolution 60/177 on the “Follow-up to the Eleventh United Nations Congress on Crime Prevention and Criminal Justice”. In this resolution, the Assembly endorsed the Bangkok Declaration on “Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice”, previously approved by the Economic and Social Council.

Furthermore, on 22 December 2005, the General Assembly adopted, on the recommendation of the Second Committee, resolution 60/207 entitled “Preventing and combating corrupt practices and transfer of assets of illicit origin and returning such assets, in particular to the countries of origin, consistent with the United Nations Convention Against Corruption”, in which it encouraged all Governments to prevent, combat and penalize corruption in all its forms, including bribery, money-laundering and the transfer of illicitly acquired assets, and to work for the prompt return of such assets through asset recovery, consistent with the principles of the United Nations Convention against Corruption.

12. International drug control^{233,234}

(a) Commission on Narcotic Drugs

The Commission on Narcotic Drugs was established by the Economic and Social Council in its resolution 9 (I) of 16 February 1946 as a functional commission and as the central policy-making body within the United Nations system dealing with drug-related matters. Pursuant to Economic and Social Council resolution 1999/30, the Commission’s agenda is structured in two distinct segments; one relating to its normative functions and one to its role as governing body of the United Nations International Drug Control Programme. Furthermore, the Commission also convenes ministerial-level segments of its sessions to focus on specific themes. During its forty-eighth session in Vienna, which was held on 19 March 2004 and from 7 to 11 March 2005 and from 7 to 8 December 2005 (reconvened session), the Commission held a thematic debate on drug abuse prevention, treatment and rehabilitation.²³⁵

The following resolutions were adopted, among others, by the Commission and brought to the attention of the Economic and Social Council:

²³³ This section covers the sessions of the General Assembly, the Economic and Social Council and the Commission on Narcotic Drugs. Selected resolutions and decisions are highlighted. Resolutions recommending the adoption of subsequent resolutions by another organ are not covered. For detailed information and documents regarding this topic generally, see the website of the United Nations Office on Drugs and Crimes at <http://www.ohchr.org>. See also General Assembly resolution 60/1 of 16 September 2005 on “2005 World Summit Outcome” and section 2 of the present chapter.

²³⁴ For complete lists of signatories and States parties to the international instruments relating to narcotic drugs and psychotropic substances that are deposited with the Secretary-General, see *Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2005* (United Nations publications, Sales No. 06.V.2 P, ST/LEG/SER.E/24), vol. I, chap. VI.

²³⁵ For the report of the Commission, see *Official Records of the Economic and Social Council, 2005, Supplement No. 8 (E/2005/28/Rev.1)*.

(a) Resolution 48/5 entitled “Strengthening international cooperation in order to prevent the use of the Internet to commit drug-related crime”, in which Member States were urged to cooperate with a view to enhancing the effectiveness of law enforcement action in relation to the use of the Internet to combat drug-related crime and to establish joint teams to identify illegal drug-related Internet sites;

(b) Resolution 48/8 entitled “Application of research in practice”, in which Member States were strongly urged to consider adopting, implementing and evaluating, in line with the international drug control treaties, best practices and relevant research-based evidence for policy and workforce development and programme delivery at all levels, in partnership with civil society and academic and research institutions;

(c) Resolution 48/9 entitled “Strengthening alternative development as an important drug control strategy and establishing alternative development as a cross-cutting issue”, in which the Commission reiterated that, in formulating and implementing drug control strategies, Member States and the United Nations entities should ensure that measures of law enforcement, interdiction, eradication and alternative development be applied in a coherent and balanced manner and in the appropriate sequence, and that there be optimal coordination between the various institutions involved;

(d) Resolution 48/11 entitled “Strengthening international cooperation to prevent the illicit manufacture of and trafficking in narcotic drugs and psychotropic substances preventing the diversion and smuggling of precursors and essential equipment in the context of Project Prism, Operation Purple and Operation Topaz”. In this resolution, Member States that had not yet done so were called upon to enact the necessary legislation to implement fully the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,²³⁶ with the possible assistance and legal advice of the United Nations Office on Drugs and Crime. The Commission further called upon all States to initiate investigations by their law enforcement authorities into seizures and cases involving the diversion or smuggling of precursors and essential equipment, with a view to tracking them back to the source of diversion, in order to prevent continuing illicit activity, and to communicate the details of those seizures and investigations on a real-time basis to the International Narcotics Control Board and to the States concerned, pursuant to Commission on Narcotic Drugs resolution 45/12 of 15 March 2002.

(b) Economic and Social Council

On 22 July 2005, the Council adopted resolution 2005/26 entitled “Demand for and supply of opiates used to meet medical and scientific needs”, in which it urged all Governments to continue to contribute to maintaining a balance between the licit supply of and demand for opiate raw materials used for medical and scientific purposes, and to cooperate in preventing the proliferation of sources of production of opiate raw materials. The Council also urged Governments of all producer countries to adhere strictly to the provisions

²³⁶ United Nations, *Treaty Series*, vol. 1582, p. 164.

of the Single Convention on Narcotic Drugs of 1961²³⁷ and that Convention as amended by the 1972 Protocol.²³⁸

On the same day, the Council also adopted, among others, resolution 2005/27 entitled “International assistance to States affected by the transit of illicit drugs”.

(c) General Assembly

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/178 entitled “International cooperation against the world drug problem”. In this resolution, the Assembly, *inter alia*, called upon all States to strengthen international cooperation among judicial and law enforcement authorities at all levels in order to prevent and combat illicit drug trafficking and to share and promote best operational practices in order to interdict illegal drug trafficking, providing technical assistance and establishing effective methods for cooperation, in particular in the areas of air, maritime, port and border control and in the implementation of extradition treaties. The Assembly further urged Member States to cooperate with a view to enhancing the effectiveness of law enforcement action in relation to the use of the Internet to combat drug-related crime, and to consider including provisions in their national drug control plans for the establishment of national networks to enhance their respective capabilities to prevent, monitor, control and suppress serious offences connected with money-laundering and the financing of terrorism.

13. Refugees and displaced persons²³⁹

(a) Executive Committee of the Programme of the United Nations High Commissioner for Refugees²⁴⁰

The Executive Committee of the Programme of the United Nations High Commissioner for Refugees was established by the Economic and Social Council in 1958²⁴¹ and functions as a subsidiary organ of the General Assembly and reports to it through the Third Committee. The Executive Committee meets annually in Geneva to review and approve the programmes and budget of the Office of the United Nations High Commissioner for Refugees (UNHCR), to advise it on international protection issues and to discuss a wide range of other items with UNHCR and its intergovernmental and non-govern-

²³⁷ United Nations, *Treaty Series*, vol. 520, p. 151.

²³⁸ *Ibid.*, vol. 976, p. 105.

²³⁹ For complete lists of signatories and States parties to the international instruments relating to refugees that are deposited with the Secretary-General, see *Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2005* (United Nations publications, Sales No. 06.V.2 P, ST/LEG/SER.E/24), vol. I, chap. V.

²⁴⁰ For detailed information and documents relating to this topic generally, see the website of the United Nations Office of the High Commissioner for Refugees at <http://www.unhcr.org>.

²⁴¹ Economic and Social Council resolution 672 (XXV) of 30 April 1958.

mental partners. The fifty-sixth plenary session of the Executive Committee was held in Geneva from 3 to 7 October 2005, during which it adopted a number of conclusions.²⁴²

In its first conclusion, entitled “General Conclusion on international protection”, the Executive Committee, *inter alia*, expressed concern at instances of persecution, generalized violence and violations of human rights, which continued to cause and perpetuate displacement within and beyond national borders, and which increased the challenges faced by States in effecting durable solutions. In this regard, it called on States to promote and protect the human rights of all refugees, and other persons of concern, paying special attention to those with specific needs, and to tailor their protection responses appropriately. Furthermore, the Executive Committee expressed deep concern that refugee protection was seriously jeopardized by expulsion of refugees leading to *refoulement* and called upon all States to refrain from taking such measures and in particular from returning or expelling refugees contrary to the principle of *non-refoulement*.

In its second conclusion, entitled “Conclusion on the provision of international protection, including through complementary forms of protection”, the Executive Committee, *inter alia*, noted the value of establishing general principles upon which complementary forms of protection for those in need of international protection may be based, on the persons who might benefit from it, and on the compatibility of these forms of protection with the 1951 Convention on the Status of Refugees²⁴³ and its 1967 Protocol²⁴⁴ and other relevant international and regional instruments. It further called upon State parties to interpret the criteria for refugee status in the 1951 Convention and/or its 1967 Protocol in such a manner that all persons who fulfil these criteria are duly recognized and protected under those instruments, rather than being accorded a complementary form of protection. Nevertheless, the Executive Committee also acknowledged that complementary forms of protection, provided by States to ensure that persons in need of international protection actually receive it, were a positive way of responding pragmatically to certain needs and encouraged the use of complementary forms of protection for individuals in need of international protection who did not meet the refugee definition under the 1951 Convention or its 1967 Protocol. In this regard, it affirmed that such protection should be implemented in a manner that strengthens the existing protection regime. The Committee finally encouraged States, in granting complementary forms of protection to those persons in need of it, to provide for the highest degree of stability and certainty by ensuring the human rights and fundamental freedoms of such persons without discrimination, taking into account the relevant international instruments and giving due regard to the best interest of the child and family unity principles.

In its third conclusion, entitled “Conclusion on local integration”, the Executive Committee, *inter alia*, noted that the criteria for identifying refugees who could benefit from local integration should be clear and objective and be applied in a non-discriminatory manner. It further noted that characteristics that may assist in determining circumstances in which local integration can be an appropriate durable solution could include, subject to States’ consideration:

²⁴² For the report of the fifty-sixth session of the Executive Committee, see *Official Records of the General Assembly, Sixtieth Session, Supplement No. 12A (A/60/12/Add.1)*.

²⁴³ United Nations, *Treaty Series*, vol. 189, p. 137.

²⁴⁴ United Nations, *Treaty Series*, vol. 606, p. 267.

- (a) refugees born in asylum countries who might otherwise become stateless; and/or
- (b) refugees who, due to their personal circumstances including the reasons prompting their flight, are unlikely to be able to repatriate to their country of origin in the foreseeable future; and/or
- (c) refugees who have established close family, social, cultural and economic links within their country of asylum, including those who already have, or have the capacity to attain, a considerable degree of socio-economic integration.

Furthermore, the Executive Committee affirmed the particular importance of the legal dimension of integration, which entails the host State granting refugees a secure legal status and a progressively wider range of rights and entitlements that are broadly commensurate with those enjoyed by its citizens and, over time, the possibility of naturalization. In this regard, it recognized that the 1951 Convention and its 1967 Protocol and relevant human rights instruments provided a useful legal framework for guiding the local integration process and that host countries may need technical and financial support to adapt and revise their national legal and administrative frameworks to allow refugees equal enjoyment of rights, services and programmes without discrimination.

(b) Commission on Human Rights

During its meeting on 19 April 2005, the Commission on Human Rights adopted resolution 2005/48 entitled “Human rights and mass exoduses”,²⁴⁵ in which it, *inter alia*, reaffirmed the primary responsibility of States to ensure the protection within their own territories of refugees, as well as internally displaced persons. The Commission further recognized that acts of deportation or forcible transfer of populations, which lead to or result from mass exoduses and displacements, were included as crimes against humanity in the Rome Statute of the International Criminal Court.²⁴⁶ The importance of ending impunity for perpetrators of such crimes was also recognized. Additionally, the Commission urged States to uphold the civilian and humanitarian character of asylum consistent with international law, *inter alia*, through effective measures to prevent the infiltration of armed elements, to identify and separate any such armed elements from refugee populations, to settle refugees at safe locations, and to afford humanitarian workers prompt, safe and unhindered access to refugees.

²⁴⁵ For the text of resolution 2005/48, see the report on the sixty-first session of the Commission on Human Rights, *Official Records of the Economic and Social Council 2005, Supplement No. 3* and corrigenda (E/2005/23 and Corr.1 and 2).

²⁴⁶ United Nations, *Treaty Series*, vol. 2187, p. 3.

(c) General Assembly²⁴⁷

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/127 entitled “Enlargement of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees”, in which it decided to increase the number of members of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees from sixty-eight to seventy States. The Economic and Social Council was requested to elect the additional members at its 2006 resumed organizational session.

On the same day, also on the recommendation of the Third Committee, the General Assembly further adopted resolution 60/129 entitled “Office of the United Nations High Commissioner for Refugees” and resolution 60/168 entitled “Protection of and assistance to internally displaced persons”.

In resolution 60/129, the Assembly, *inter alia*, endorsed the report of the Executive Committee on the work of its fifty-sixth session. It also emphasized the obligation of all States to accept the return of their nationals and called upon States to facilitate such return. In this context, the need for the return to be undertaken in a safe and humane manner, with full respect for their human rights and dignity, irrespective of the status of the persons concerned, was affirmed.

In addition, the Assembly noted that local integration in the refugee context was a sovereign decision and an option to be exercised by States, guided by their treaty obligations and human rights principles. This was a dynamic and multi-faceted two-way process that required efforts by all parties concerned, including a preparedness on the part of the refugees to adapt to the host society without having to forego their own cultural identity, and a corresponding readiness on the part of host communities and public institutions to welcome refugees and to meet the needs of a diverse population. The Assembly acknowledged that the process of local integration was complex and gradual, comprising three distinct but interrelated legal, economic, and social and cultural dimensions.

In resolution 60/168, the General Assembly, *inter alia*, emphasized that States had the primary responsibility to provide protection and assistance to internally displaced persons within their jurisdiction, as well as to address the root causes of the displacement problem in appropriate cooperation with the international community. Furthermore, the Assembly recognized the Guiding Principles on Internal Displacement²⁴⁸ as an important international framework for the protection of internally displaced persons.

²⁴⁷ See also resolution 60/1 of 16 September 2005 on the “2005 World Summit Outcome”. For General Assembly resolutions dealing with refugees and displaced persons in particular regional areas, see the following resolutions: 60/100 of 8 December 2005 (Assistance to Palestine refugees), 60/101 of 8 December 2005 (Persons displaced as a result of the June 1967 and subsequent hostilities), 60/102 of 8 December 2005 (Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East), 60/103 of 8 December 2005 (Palestine refugees’ properties and their revenues) and 60/128 of 16 December 2005 (Assistance to refugees, returnees and displaced persons in Africa).

²⁴⁸ E/CN.4/1998/53/Add.2, annex.

14. International Court of Justice²⁴⁹

(a) Organization of the Court

As from 15 February 2005,²⁵⁰ the composition of the Court is as follows:

President: Shi Jiuyong (China);

Vice-President: Raymond Ranjeva (Madagascar);

Judges: Abdul G. Koroma (Sierra Leone); Vladlen S. Vereshchetin (Russian Federation); Rosalyn Higgins (United Kingdom); Gonzalo Parra-Aranguren (Venezuela); Pieter H. Kooijmans (Netherlands); Francisco Rezek (Brazil); Awn Shawkat Al-Khasawneh (Jordan); Thomas Buergenthal (United States of America); Nabil Elaraby (Egypt); Hisashi Owada (Japan); Bruno Simma (Germany); Peter Tomka (Slovakia); and Ronny Abraham (France).

The Registrar of the Court, elected for a term of seven years on 10 February 2000, is Mr. Philippe Couvreur; the Deputy-Registrar, re-elected on 19 February 2001, also for a term of seven years, is Mr. Jean-Jacques Arnaldez.

The Chamber of Summary Procedure, which is established annually in accordance with Article 29 of the Statute to ensure the speedy dispatch of business, is composed as follows:

Members

President: Shi Jiuyong;

Vice-President: R. Ranjeva;

Judges: G. Parra-Aranguren, A. S. Al-Khasawneh, T. Buergenthal.

Substitute Members

Judges: N. Elaraby and H. Owada.

Following the resignation of Judge Gilbert Guillaume as of 11 February 2005 and the election held on 8 April 2005, the Court's Chamber for Environmental Matters, which was established in 1993 pursuant to Article 26, paragraph 1, of the Statute, and whose mandate in its present composition runs to February 2006, is composed as follows:

President: Shi Jiuyong;

Vice-President: R. Ranjeva;

Judges: P. H. Kooijmans, F. Rezek, N. Elaraby, B. Simma and P. Tomka.

On 7 November 2005, the General Assembly and the Security Council elected five Members to the International Court of Justice for a term of office of nine years, beginning on 6 February 2006. As a result, Judge Thomas Buergenthal (United States of America) was re-elected as member of the Court; and Mr. Mohamed Bennouna (Morocco), Mr. Kenneth

²⁴⁹ For more information about the Court, see the reports of the International Court of Justice to the General Assembly, *Official Records of the General Assembly, Sixtieth Session, Supplement No. 4 (A/60/4)* and *ibid.*, *Sixty-first Session, Supplement No. 4 (A/61/4)*. Information about the cases before the International Court of Justice during 2005 is contained in chapter VII below.

²⁵⁰ Following the resignation, as from 11 February 2005, of Judge Gilbert Guillaume (France), the General Assembly and the Security Council, on 15 February 2005, elected Mr. Ronny Abraham (France) for the remainder of Judge Guillaume's term, which will expire on 5 February 2009.

Keith (New Zealand), Mr. Bernardo Sepúlveda Amor (Mexico) and Mr. Leonid Skotnikov (Russian Federation) were elected members of the Court.

(b) Jurisdiction of the Court²⁵¹

On 25 February 2005, Portugal amended its declaration recognizing the compulsory jurisdiction of the Court. The declaration reads as follows:

“On behalf of the Portuguese Republic, I declare and give notice that Portugal, continuing to accept the jurisdiction of the International Court of Justice, amends its declaration made on 19 December 1955, replacing its terms by the following:

1. Under Article 36, paragraph 2, of the Statute of the International Court of Justice, the Portuguese Republic recognizes the jurisdiction of the Court as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation (and to the extent it accepts it), until such time as notice may be given to terminate the acceptance, in all legal disputes other than:

(i) any dispute which Portugal has agreed or shall agree with the other party or parties thereto to settle by some other method of peaceful settlement;

(ii) any dispute with any State that has deposited or ratified the acceptance of the Court’s compulsory jurisdiction or an amendment thereto so that the dispute became included in its scope less than twelve months prior to the filing of the application bringing the dispute before the Court;

(iii) any dispute, unless it refers to territorial titles or rights or to sovereign rights or jurisdiction, arising before 26 April 1974 or concerning situations or facts prior to that date;

(iv) any dispute with a party or parties to a treaty regarding which the jurisdiction of the International Court of Justice has, under the applicable rules, been explicitly excluded, irrespective of whether the scope of the dispute refers to the interpretation and application of the treaty provisions or to other sources of international law.

2. The Portuguese Republic also reserves the right at any time, by means of a notification addressed to the Secretary-General of the United Nations, and with effect as from the moment of such notification, either to add to, amend or withdraw any of the foregoing reservations, or any that may hereafter be added,

Lisbon, 18 February 2005”

Furthermore, on 2 September 2005, Djibouti deposited a declaration recognizing the compulsory jurisdiction of the Court.

The declaration of Djibouti reads as follows:

“Desiring, on the one hand, to reach a peaceful and equitable settlement of all international disputes, including those in which it may be involved, and, on the other hand, to make a contribution to the further development and consolidation of international law, the Republic of Djibouti, in accordance with Article 36 (2) of the Statute of the International Court of Justice, hereby declares that it recognizes as compulsory *ipso facto* and

²⁵¹ For more information regarding the States that have made declarations recognizing the compulsory jurisdiction of the Court, see *Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2005* (United Nations publications, Sales No. 06.V.2 P, ST/LEG/SER.E/24), vol. I, chap. I.

without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes concerning:

- (a) The interpretation of a treaty;
- (b) Any question of international law;
- (c) The existence of any fact which, if established, would constitute a breach of an international obligation;
- (d) The nature and extent of the reparation to be made for the breach of an international obligation;

with the reservation, however, that this declaration shall not apply to:

1. Disputes in regard to which the parties to the dispute have agreed or shall agree to have recourse to some other method or methods of settlement;

2. Disputes in regard to matters which are exclusively within the domestic jurisdiction of the Republic of Djibouti, under international law;

3. Disputes relating to or connected with facts or situations of hostilities, armed conflicts, individual or collective actions taken in self-defence, resistance to aggression, fulfilment of obligations imposed by international bodies and other similar or related acts, measures or situations in which the Republic of Djibouti is, has been or may in future be involved;

4. Disputes concerning the interpretation or application of a multilateral treaty unless all the parties to the treaty are also parties to the case before the Court or the Government of Djibouti specially agrees to jurisdiction of the Court;

5. Disputes with the Government of any State with which, on the date of an application to bring a dispute before the Court, the Government of Djibouti has no diplomatic relations or which has not been recognized by the Government of Djibouti;

6. Disputes with non-sovereign States or territories;

7. Disputes with the Republic of Djibouti concerning or relating to:

(a) The status of its territory or the modification or delimitation of its frontiers or any other matter concerning boundaries;

(b) The territorial sea, the continental shelf and the margins, the exclusive fishery zone, the exclusive economic zone and other zones of national maritime jurisdiction including for the regulation and control of marine pollution and the conduct of scientific research by foreign vessels;

(c) The condition and status of its islands, bays and gulfs;

(d) The airspace superjacent to its land and maritime territory; and

(e) The determination and delimitation of its maritime boundaries.

This declaration is made for a period of five years, without prejudice to the right of denunciation and modification which attaches to any commitment undertaken by the State in its international relations.

It shall take effect on the date of its receipt by the Secretary-General of the United Nations.

Djibouti, 18 July 2005

[Signed] MAHMOUD ALI YOUSOUF

Minister for Foreign Affairs and International Cooperation”

(c) Amendments to the Rules of Court

In 2005, the Court adopted a new procedure for the promulgation of amendments to its Rules. The Preamble to the Rules was also amended to reflect this procedure.²⁵²

Under the new procedure, the text of any amendment to the Rules is posted on the Court's website, with an indication of its date of entry into force and a note of any temporal reservation relating to its applicability. The practice of indicating each amendment in the Preamble has been discontinued and amended articles are instead indicated by an asterisk and footnote in the integral updated text.

The Court also amended article 52 of its Rules dealing with the procedure to be followed where the Registrar arranges for the printing of a pleading,²⁵³ and article 43 regarding the notifications to be sent by the Court to those not directly involved in a case, but who are parties to a convention whose construction may be in question in the proceedings.²⁵⁴

(d) General Assembly

On 27 October 2005, during its sixtieth session, the General Assembly adopted, without reference to a Main Committee, decision 60/507, in which it took note of the report of the International Court of Justice for the period from 1 August 2004 to 31 July 2005.²⁵⁵

15. International Law Commission²⁵⁶

(a) Membership of the Commission

The membership of the International Law Commission during the 2002–2006 quinquennium, for the fifty-seventh session of the Commission, is Mr. Emmanuel Akwei Addo (Ghana); Mr. Husain M. Al-Baharna (Bahrain); Mr. Ali Mohsen Fetais Al-Marri (Qatar); Mr. João Clemente Baena Soares (Brazil); Mr. Ian Brownlie (United Kingdom); Mr. Enrique Candioti (Argentina); Mr. Choung Il Chee (Republic of Korea); Mr. Pedro Comissario Afonso (Mozambique); Mr. Riad Daoudi (Syrian Arab Republic); Mr. Christopher John Robert Dugard (South Africa); Mr. Constantin P. Economides (Greece); Ms. Paula Escarameia (Portugal); Mr. Salifou Fomba (Mali); Mr. Giorgio Gaja (Italy); Mr. Zdzislaw Galicki (Poland); Mr. Peter C. R. Kabatsi (Uganda); Mr. Maurice Kamto (Cameroon); Mr. James Lutabanzibwa Kateka (United Republic of Tanzania); Mr. Fathi Kemicha (Tunisia); Mr. Roman Anatolyevitch Kolodkin (Russian Federation); Mr. Martti Koskenniemi (Finland); Mr. William Mansfield (New Zealand); Mr. Michael Matheson (United States); Mr. Theodor Viorel Melescanu (Romania); Mr. Djamchid Momtaz (Islamic Republic of Iran); Mr. Bernd H. Niehaus (Costa Rica); Mr. Didier Opertti Badan (Uruguay); Mr. Guillaume

²⁵² See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 4 (A/60/4)*, paras. 228–232.

²⁵³ *Ibid.*, paras. 233–235.

²⁵⁴ *Ibid.*, *Sixty-first Session, Supplement No. 4 (A/61/4)*, paras. 204–206.

²⁵⁵ *Ibid.*, *Sixtieth Session, Supplement No. 4 (A/60/4)*.

²⁵⁶ Detailed information and documents regarding the work of the Commission may be found on the Commission's website at <http://www.un.org/law/ilc/index.htm>.

Pambou-Tchivounda (Gabon); Mr. Alain Pellet (France); Mr. Pemmeraju Sreenivasa Rao (India); Mr. Víctor Rodríguez Cedeño (Venezuela); Mr. Bernardo Sepúlveda (Mexico); Ms. Hanqin Xue (China); and Mr. Chusei Yamada (Japan).

(b) Fifty-seventh session of the Commission

The International Law Commission held the first part of its fifty-seventh session from 2 May to 3 June and the second part of the session from 11 July to 5 August 2005 at its seat at the United Nations Office at Geneva.²⁵⁷ The Commission considered the following topics.

With regard to the topic “Shared Natural Resources”, the Commission considered the third report²⁵⁸ of the Special Rapporteur (Mr. Chusei Yamada), which contained a complete set of 25 draft articles on the law of transboundary aquifers. The Commission also had before it a set of comments and observations received from Governments and relevant intergovernmental organizations.²⁵⁹ The Commission established a Working Group on Transboundary Groundwaters chaired by Mr. Enrique Candioti, to review the draft articles presented by the Special Rapporteur, taking into account the debate in the Commission on the topic. The Working Group reviewed and revised eight draft articles and recommended that it be reconvened in 2006 to complete its work. The Commission requested those States and intergovernmental organizations that had not yet responded to submit detailed and precise information on the basis of a questionnaire prepared by the Special Rapporteur.²⁶⁰

As regards the topic “Effects of armed conflicts on treaties”, the Commission considered the first report²⁶¹ of the Special Rapporteur on the topic (Mr. Ian Brownlie), presenting an overview of the issues involved in the topic together with a set of 14 draft articles without prejudice to their final form, as well as a memorandum prepared by the Secretariat entitled “The effect of armed conflicts on treaties: an examination of practice and doctrine”.²⁶² The Commission endorsed the Special Rapporteur’s suggestion that the Secretariat circulate a note to Governments requesting information about their practice with regard to this topic, in particular the more contemporary practice.

Concerning the topic “Responsibility of international organizations”, the Commission considered the third report²⁶³ of the Special Rapporteur (Mr. Giorgio Gaja), proposing nine draft articles dealing with the existence of a breach of an international obligation on the part of an international organization and with the responsibility of an international organization in connection with the act of a State or another international organization. The Commission adopted nine draft articles together with commentaries. As the fourth report of the Special Rapporteur will address the questions relating to circumstances pre-

²⁵⁷ For the report of the International Law Commission on the work of its fifty-seventh session, see *Official Records of the General Assembly, Sixtieth Session, Supplement No. 10 (A/60/10)*.

²⁵⁸ A/CN.4/551 and Corr.1 and Add.1.

²⁵⁹ A/CN.4/555 and Add.1.

²⁶⁰ See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10 (A/59/10)*, para. 81.

²⁶¹ A/CN.4/552.

²⁶² A/CN.4/550 and Corr.1 and 2.

²⁶³ A/CN.4/553.

cluding wrongfulness and responsibility of States for the international wrongful acts of international organizations, the Commission stated that it would welcome comments and observations relating to these questions.

As regards the topic “Diplomatic protection”, the Commission considered the sixth report²⁶⁴ of the Special Rapporteur (Mr. John Dugard), dealing with clean hands doctrine in international law.

As regards the topic “Expulsion of aliens”, the Commission considered the preliminary report²⁶⁵ of the Special Rapporteur (Mr. Maurice Kamto), presenting an overview of some of the issues involved and a possible outline for further consideration of the topic. The Special Rapporteur requested that the Secretariat prepare a compilation of applicable national and international instruments, texts and jurisprudence on the topic. The Commission further requested States to submit any information concerning their practice on the subject, including national legislation.

With regard to the topic “Unilateral Acts of States”, the Commission considered the eighth report²⁶⁶ of the Special Rapporteur (Mr. Victor Rodríguez Cedeño), which contained the analysis of 11 cases of State practice and the conclusions thereof. The Commission stated that it would be interested in receiving comments and observations from States on the revocability or modification of unilateral acts, in particular regarding their practice in this regard, the circumstances and conditions, as well as the effects of such revocation or modification and the scope of possible third party reactions in that respect. A Working Group on Unilateral Acts was reconstituted under the chairmanship of Mr. Alain Pellet. Its work focused on the study of State practice and on the elaboration of preliminary conclusions on the topic, which the Commission would consider at its next session.

Concerning the topic “Reservations to Treaties”, the Commission considered part of the tenth report²⁶⁷ of the Special Rapporteur (Mr. Alain Pellet) on the validity of reservations and the concept of the object and purpose of the treaty, and referred to the Drafting Committee seven draft guidelines dealing with validity of reservations and the definition of object and purpose of the treaty. The Commission also adopted two draft guidelines, together with commentaries, dealing with the definition of objections to reservations and the definition of objections to the late formulation or widening of the scope of a reservation. Finally, the Commission stated that it would be interested in receiving comments from Governments on the practice by States with regard to objections to a reservation considered incompatible with the object and purpose of a treaty without opposing the entry into force of that treaty between themselves and the author of the reservation.

In relation to the topic “Fragmentation of international law: difficulties arising from the diversification and expansion of international law”, the Commission held an exchange of views on the topic on the basis of a briefing by the Chairman of the Study Group (Mr. Martti Koskenniemi) on the status of work of the Study Group. The Study Group had before it the following documents: (a) a memorandum on regionalism in the context of the study on “the function and scope of the *lex specialis* rule and the question of self-con-

²⁶⁴ A/CN.4/546.

²⁶⁵ A/CN.4/554.

²⁶⁶ A/CN.4/557.

²⁶⁷ A/CN.4/558 and Corr.1 and Add.1 and Add.1/Corr.1 and Add.2.

tained regimes”; (b) a study on the interpretation of treaties in the light of “any relevant rules of international law applicable in the relations between the parties” (article 31 (3) (c) of the Vienna Convention on the Law of Treaties), in the context of general developments in international law and concerns of the international community; (c) a study on the application of successive treaties relating to the same subject matter (article 30 of the Vienna Convention on the Law of Treaties); (d) a study on the modification of multilateral treaties between certain of the parties only (article 41 of the Vienna Convention on the Law of Treaties); and (e) a study on hierarchy in international law: *jus cogens*, obligations *erga omnes*, Article 103 of the Charter of the United Nations, as conflict rules. The Study Group also had before it an informal paper on the “Disconnection Clause”.

The Study Group reaffirmed its approach to focus on the substantive aspects of fragmentation in the light of the Vienna Convention on the Law of Treaties, 1969, while leaving aside institutional considerations pertaining to fragmentation. It further reaffirmed its intention to prepare, as the substantive outcome of its work, a single collective document consisting of two parts, namely, one part consisting of an analytical study on the question of fragmentation, and, a second part of a condensed set of conclusions, guidelines or principles. It envisaged that it would be in a position to submit such a consolidated document to the fifty-eighth session of the Commission in 2006.

(c) Sixth Committee

The Sixth Committee considered the item “Report of the International Law Commission on the work of its fifty-seventh session” at its 11th to 20th and 22nd meetings from 24 to 26 October and on 28 and 31 October, and from 1 to 3 November and on 16 November 2005.

The Chairman of the International Law Commission at its fifty-seventh session, Mr. Djamchid Momtaz (Islamic Republic of Iran), introduced the various chapters of the report of the Commission at the Committee’s 11th, 13th and 17th meetings and made a concluding statement at the 20th meeting.

During the debate of this item,²⁶⁸ with regard to the topic *Shared natural resources*, the progress made on the topic including the submission by the Special Rapporteur of a complete set of draft articles on the law on transboundary aquifers was welcomed. Support was expressed for the flexible approach to the topic, proposed by the Special Rapporteur, allowing for the adaptation of the rules being developed, by means of bilateral or regional accords. It was also suggested that it was important to make clear that the work on the topic did not constitute codification since the draft articles went beyond established law.

While some delegations expressed support for the initial focus on transboundary aquifers, others expressed concern over the limited scope of the draft articles, noting that it would have been better to have overarching rules on the topic shared natural resources as a whole. In terms of a further view, the Commission was cautioned against taking up oil and gas; while others expressed the wish for the consideration of such related aspects.

²⁶⁸ For a more exhaustive summary of the debate of the Sixth Committee with regard to the various topics, see the website of the Sixth Committee (<http://www.un.org/ga/sixth/>) and the summary records (A/C.6/60/SR.11–20 and 22).

Other suggestions included focusing on the rules relating to the relationship between aquifer States, since any extension of the topic to obligations of non-aquifer States would delay the project. In terms of another view, it was important to acknowledge the international dimension of the topic and to include duties applicable to all States. Others stressed the importance of the principle of the sovereignty of aquifer States over underground waters and reaffirmed the relevance of resolution 1803 (XVII) on permanent sovereignty over natural resources. Caution was expressed against unnecessarily universalizing the regime for transboundary waters. The inclusion of a provision relating to developing countries was also favoured. Several delegations welcomed in particular the involvement of experts in the elaboration of the draft articles.

It was further suggested that the Commission focus only on aspects that differed from the 1997 Convention on the law of non-navigational uses of international watercourses,²⁶⁹ while others underscored the usefulness of the 1997 Convention as a model, which could be resorted to together with other approaches. Doubts were also expressed as to the appropriateness of applying the 1997 Convention as a precedent since it had not yet entered into force.

As to the final form of the draft articles, several delegations preferred to defer the matter until the content of the draft articles was made more precise. Nevertheless, some delegations expressed a preference for recommendatory principles or a framework approach that would provide the basis for the elaboration of legally binding agreements. Others observed that the framework approach needed to be revisited. Still others opted for the elaboration of a model regional agreement. Several delegations noted that context-specific arrangements, including bilateral and regional arrangements, were the best way of addressing pressures on transboundary groundwaters, while others favoured a holistic approach. It was proposed that the Commission develop a list of considerations or guidelines that States may take into account in negotiating bilateral or regional arrangements.

In connection with the debate on topic *Effects of armed conflicts on treaties*, all delegations supported the general approach to the topic taken by the Commission, namely to ensure the stability of treaty relations between States. Agreement was expressed with the view that the topic formed part of the law of treaties and not that relating to the use of force. Support was expressed for the inclusion within the scope of the topic of treaties between States as well as those concluded by international organizations, and of both international and non-international armed conflicts, as well as the question of military occupation. Others expressed doubts on including such issues within the scope of the topic. It was further suggested that the draft articles also apply to treaties which are being provisionally applied. As regards the phrase "armed conflict", it was suggested that any definition take into account the report of the High Level Panel on Threats, Challenges and Change.²⁷⁰

Support was expressed for the basic proposition of the Special Rapporteur, in article 3, that the outbreak of an armed conflict does not ipso facto terminate or suspend the operation of treaties, while others raised concerns. It was proposed that the position of third States be considered.

As regards the resort to the concept of the intention of the parties as the indicia of the treaty's susceptibility to termination or suspension, it was maintained that it was an

²⁶⁹ A/51/869.

²⁷⁰ A/59/565 and Corr.1.

important criterion, albeit not the only one, in determining whether a treaty is terminated or suspended following the outbreak of armed conflict. Others expressed concerns, and called for additional criteria. In terms of another suggestion, the concept could be supplemented by the criterion of the “nature” of the treaty.

Several delegations preferred greater clarification of the indicative list in draft article 7, while others opposed its inclusion. In terms of another suggestion, the indicative list, if it were to be retained, should include “treaties creating or modifying boundaries”, as well as a reference to the Charter of the United Nations.

Several delegations were of the view that draft article 10 had to be revisited to make it clear that a State should be permitted to avoid any treaty obligations not in conformity with its inherent right of self-defence, or with a decision of the Security Council taken under Chapter VII of the Charter of the United Nations. It was suggested that further consideration be given to the question of the legality of conduct of the parties to an armed conflict and the possible asymmetry in the relationship between an aggressor State and a victim State.

Opposition was also expressed to the inclusion of draft article 11 on the legal effect of decisions of the Security Council taken in accordance with Chapter VII of the Charter of the United Nations.

Concerning the topic *Responsibility of international organizations*, the delegations commended the Commission for its progress on the topic, notably the adoption of draft articles 8 to 16 at its recent session. Reference was made to the complexity of the topic in light of the diversity of international organizations. Some delegations stressed the need for further examination of the notion of “international organization”, account being taken of entities that are not (purely) intergovernmental.

As to the question of the legal nature of the internal rules of an international organization, support was expressed for the present inconclusive provision, while others maintained that further clarification was required. In terms of a third view, the provision was unnecessary. The view was also expressed that paragraph 2 of draft article 8 (dealing with international obligations established by the “rules” of an international organization) would not cover procedural or administrative rules.

Regarding the relationship between the responsibility of international organizations and that of their member States, the view was expressed that the articles should be redrafted to cover the full range of possibilities. Some delegations questioned the distinction between recommendations and binding decisions. While support was expressed for the Commission’s approach, others felt that it required further consideration. It was suggested that the special case of integration organizations also be covered, while others considered it as distinct from general international law. It was also suggested that the Commission consider the question of joint and several responsibility for States and international organizations, with a view to including a provision on proportionate responsibility sharing.

With regard to the questions raised in the Commission’s report, the view was expressed that assistance to an international organization in the commission of an internationally wrongful act was a question of State responsibility, but that, in light of its exclusion from the draft articles on State responsibility, it could be included in the commentary.

As to future work, several delegations believed that the Commission should consider issues relating to State responsibility, while others felt that such issues were beyond the scope of the topic given the differences between States and international organizations, as well as the diversity of such organizations.

Concerning the topic *Diplomatic protection*, general support was expressed for the Commission's decision not to include the doctrine of "clean hands" within the draft articles on diplomatic protection. Support was expressed for the basic approach that States have a right, not a duty, to exercise diplomatic protection. Support was also expressed for the basic principle in draft article 7 dealing with cases of multiple nationalities, as well as draft article 8 on the diplomatic protection of stateless persons and refugees.

In terms of suggestions for the second reading, it was proposed that the question of the consequences of diplomatic protection should be considered; that the Commission reconsider the provisions on the diplomatic protection of legal persons; and that provisions be included on the exercise of diplomatic protection, as well as on the allocation of compensation in the context of group claims. Some delegations cautioned against draft article 17 being interpreted as allowing for the undertaking of coercive measures.

As regards the debate on the topic *Expulsion of aliens*, support was expressed for the general approach taken by the Special Rapporteur in trying to reconcile the right of States to expel aliens and the need to ensure respect for human rights. In terms of another view, the appropriateness of the topic's consideration by the Commission was questioned.

Emphasis was placed on the importance of a proper delimitation of the scope of the topic, with several delegations favouring the exclusion of questions relating to international humanitarian law, and others that of large scale expulsions as a result of a territorial dispute as well as expulsion from occupied territories. Still others suggested that mass expulsions occurring in such contexts might be covered. A preference was also expressed for the exclusion of issues related to non-admission and immigration law in general. In terms of another view, questions relating to preventive measures ("*éloignement*") and to the admission of expelled aliens could be considered. Others also proposed the inclusion of the situation of illegal aliens.

Several delegations stressed the importance of considering legitimate grounds for expulsion, while others also highlighted some procedural requirements, such as motivation, due process and judicial review. It was also suggested that decisions on expulsion should be taken on an individual basis. Several delegations considered collective expulsion as being prohibited under international law.

It was proposed that an in-depth study of national legislation and case-law be undertaken, with the support of the Secretariat, and which would give equal attention to developed and developing countries. The Commission was also called upon to take into account the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.²⁷¹

Some doubts were expressed as to the possible outcome of the work of the Commission on this topic. In terms of some suggestions, it could be a repertory of practice, a political declaration, or a text that could eventually become a protocol to the International Covenant on Civil and Political Rights.

²⁷¹ United Nations, *Treaty Series*, vol. 2220, p. 3.

As regards the debate on the topic *Unilateral acts of States*, several delegations welcomed the work accomplished by the Commission thus far. All delegations noted that the topic raised particular challenges. While some expressed doubts as to continuing its study, others emphasized the importance of continuing the work.

Emphasis was further placed on retaining the current focus towards an analysis of State practice. Several observations were made, including: that it was difficult to define a unilateral act of the State; that the intention of the State to commit itself was an important feature; and that it may not be appropriate to produce definitions and rules that draw parallels with the Vienna Convention on the Law of Treaties. The Commission was encouraged to also consider within the scope of the topic unilateral acts of States which have extraterritorial effect, including national legislation.

Several delegations suggested that the work of the Commission's working group on the topic should focus on unilateral acts *stricto sensu*, and that it would be useful to reach a consensus on preliminary conclusions on how it should proceed with and conclude the topic. It was suggested that the Commission could take stock of the work done in the past ten years and identify some basic principles, guidelines or conclusions accompanied by examples of State practice that may be of use to States. Some delegations did not rule out the possibility of a binding instrument.

On the topic *Reservations to treaties*, delegations expressed gratitude for the continued work on the preparation of a Guide to Practice seeking to clarify the relevant provisions of the Vienna Convention on the Law of Treaties. At the same time, emphasis was placed on the importance of consistency with the Vienna Convention, in particular articles 19 to 23 thereof. The view was expressed that the Guide to Practice should serve as a reference tool in the daily work of Governments.

Preliminary approval was expressed regarding the observations by the Special Rapporteur on the definition of the concept of "object and purpose" of a treaty, although it was specified that the criterion was not applicable in respect of a reservation that affected a pre-emptory norm of international law, particularly procedural protections for human rights. Agreement was expressed with the Special Rapporteur's view that "object and purpose" should be seen as a single term. Some other delegations questioned the usefulness of attempting to define such a term, and noted that the definition currently offered by the Special Rapporteur did not add significant clarity. It was further proposed that the definition could be improved with the inclusion of references to doctrine and case law.

With regard to the question posed to States regarding the practice of maintaining treaty relations despite having objected to a reservation as incompatible with the object and purpose of a treaty, some delegations indicated that such decisions were of a practical nature, and that, consistent with article 21 of the Vienna Convention, the objecting State could determine the consequences of its objection on the bilateral treaty relations. On the other hand, other delegations were of the view that when a reservation was incompatible with the object and purpose of the treaty, the reserving State could not be considered a party to the treaty. It was noted that given the bureaucratic difficulties inherent in objecting to a reservation, limited significance should be given to the failure to object. It was also noted that objections to incompatible reservations do not have the same legal effects as objections to reservations that have satisfied the object and purpose test. Several Governments highlighted their practice on the issue, under which such reservations are considered *per se*

invalid, and severed from the treaty, which remains enforceable. It was pointed out that in such a case, guideline 3.3.3, allowing the acceptance of an invalid reservation was unnecessary. It was further suggested that the practice of objecting to a reservation under article 19 of the Vienna Convention on the basis of its inconformity with the object and purpose of the treaty should be distinguished from the practice of objecting to a reservation under articles 20 and 21 by dealing with them in separate sub-guidelines and by referring to the former as “rejection” and the latter as “objection”. In this connection, differing views were expressed as to whether reservations incompatible with the object and purpose of a treaty should be referred to as “invalid” rather than “impermissible” or “opposable”. In terms of a further view, a State which objected on the ground of the incompatibility of the reservation with the object and purpose, but chose to retain a treaty relation with the reserving State, might in fact merely be making a simple objection in line with article 21 of the Vienna Convention. In terms of another suggestion, the Commission could consider proposing the establishment of an authority to decide on the validity of reservations, although opposition was expressed to giving such authority to the depositary.

Concerning draft guideline 3.1.7, on vague reservations, some delegations pointed out that vague reservations caused significant legal uncertainty and caused difficulties for potential objecting States. It was suggested that a procedure for clarifying a vague reservation with the formulating State be set forth in a draft guideline. Alternatively, it suggested that vague reservations could be considered invalid since they did not pertain to “certain provisions of a treaty” as required by article 2 of the Vienna Convention. Others were of the view that the automatic qualification of vague reservations as incompatible with the object and purpose of a treaty was too severe.

While it was suggested that human rights treaties might require special consideration, the view was expressed that a separate regime should not be created for human rights treaties in the draft guidelines. It was also suggested that an additional guideline dealing with reservations relating to the jurisdiction of the International Court of Justice be included.

With regard to the debate on the topic *Fragmentation of international law: difficulties arising from the diversification and expansion of international law*, appreciation was expressed for the results achieved thus far by the Study Group of the Commission. While the basic approach that focused on the substantive aspects of fragmentation was welcomed, some delegations expressed reservations on the topic as a whole as well as regarding its eventual outcome. The view was expressed that the Commission should exercise restraint when finalizing its work since the content of the topic was uncertain. Others were of the view that that the outcome of the studies would be of great reference value to practitioners. At the same time, it was noted that it was important for practitioners to have a clear understanding of the relationships among various instruments. In terms of a further view, the outcome should be confined to the analytical study itself, and should not be prescriptive as implied by the terms “guidelines” and “principles” (nor was it suitable for the elaboration of draft articles). Others maintained that guidelines of a general nature may be appropriate to avoid the academic orientation of the topic.

Concerning the topic *International liability in case of loss from transboundary harm arising out of hazardous activities* (international liability in case of loss from transboundary harm arising out of hazardous activities), it was noted that the Commission had achieved significant progress in the completion on first reading in 2004 of the draft principles on

allocation of loss, which struck a fair balance between the rights and obligations of the operator and the victim.

As regards chapter XII of the Commission's report concerning other decisions and conclusions of the Commission, several delegations supported the Commission's decision to include the topic "the obligation to extradite or prosecute (*aut dedere aut judicare*)" in its work plan. The view was expressed that the topic should include an analysis of the principle of "universal" jurisdiction. It was also suggested that the Commission reconsider its programme with a view to ending some topics which have been on the agenda for a long time. Emphasis was placed on the importance of the Commission taking into account the statements made in the Sixth Committee.

Suggestions for new topics included: pre-emptive use of force in international law; the responsibility to protect; and international disaster relief law.

At the 22nd meeting, on 16 November, the representative of Jordan, on behalf of the Bureau, introduced a draft resolution entitled "Report of the International Law Commission on the work of its fifty-seventh session",²⁷² which was adopted by the Committee, at the same meeting.

(d) General Assembly

On 23 November 2005, the General Assembly, on the recommendation of the Sixth Committee, adopted resolution 60/22 entitled "Report on the work of the International Law Commission on the work of its fifty-seventh session".

In the resolution, the Assembly took note of the report of the International Law Commission and drew the attention of Governments to the importance for the Commission of receiving their views on the draft articles and commentaries on diplomatic protection, as well as on the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, which were adopted by the Commission at its fifty-sixth session. The General Assembly also invited Governments to provide information to the International Law Commission regarding the topics "Shared natural resources", "Effects of armed conflicts on treaties", "Responsibility of international organizations", "Expulsion of aliens", "Unilateral acts of States", and "Reservations to treaties". Finally, the Assembly endorsed the decision of the International Law Commission to include the topic "The obligation to extradite or prosecute (*aut dedere aut judicare*)" in its programme of work.

²⁷² A/C.6/60/L.14.

16. United Nations Commission on International Trade Law²⁷³

(a) United Nations Commission on International Trade Law²⁷⁴

The General Assembly established the United Nations Commission on International Trade Law (UNCITRAL) at its twenty-first session in 1966,²⁷⁵ to promote the progressive harmonization and unification of the law of international trade, and requested the Commission to submit an annual report to the Assembly. The Commission began its work in 1968. It originally consisted of 29 Member States representing the various geographic regions and the principal legal systems of the world. Later on, the General Assembly increased the membership of the Commission from 29 to 36 States,²⁷⁶ and from 36 to 60 States.²⁷⁷

THIRTY-EIGHTH SESSION OF THE COMMISSION

UNCITRAL held its thirty-eighth session in Vienna from 4 to 15 July 2005 and adopted its report on 15 July 2005.²⁷⁸

During the session, the Commission finalized and approved the draft Convention on the use of electronic communications in international contracts. The Commission noted that the draft convention aimed at removing legal obstacles to electronic commerce, and those that arose under other instruments on the basis of well-established principles, such as functional equivalence. As many States were taking steps to broaden the use of electronic commerce and actively promote the modernization of business methods, the Commission observed that the draft convention would serve as a useful basis to allow States to simplify various domestic rules applying to electronic commerce. The draft convention would also enhance confidence and trust in electronic commerce in cross-border trade.

With respect to its work on procurement, the Commission recalled its decision to update the UNCITRAL Model Law on Procurement of Goods, Construction and Services²⁷⁹ to reflect new practices, in particular those which resulted from the use of electronic communications in public procurement, and the experience gained in the use of the Model Law as a basis for law reform in public procurement, as well as possible additional issues. At its thirty-eighth session, the Commission took note of the reports of the sixth and seventh sessions of the Working Group.²⁸⁰ During the sixth session, the Working Group began its work on the preparation of proposals for the revision of the Model Law, with the preliminary consideration of the following topics: (a) electronic publication of procurement-related information; (b) the use of electronic communications in the procure-

²⁷³ Detailed information and documents regarding the work of the Commission may be found on the Commission's website at <http://www.uncitral.org/>.

²⁷⁴ For the membership of the Commission, see the report of the United Nations Commission on International Trade Law on the work of its thirty-eighth session, *Official Records of the General Assembly, Sixtieth Session, Supplement No. 17 (A/60/17)*, chap. II, sect. B.

²⁷⁵ General Assembly resolution 2205 (XXI) of 17 December 1966.

²⁷⁶ General Assembly resolution 3108 (XXVIII) of 12 December 1973.

²⁷⁷ General Assembly resolution 57/20 of 19 November 2002.

²⁷⁸ *Official Records of the General Assembly, Sixtieth Session, Supplement No. 17 (A/60/17)*.

²⁷⁹ *Ibid.*, *Forty-ninth Session, Supplement No. 17* and corrigendum (A/49/17 and Corr.1), annex I.

²⁸⁰ A/CN.9/568 and A/CN.9/575, respectively.

ment process; (c) controls over the use of electronic communications in the procurement process; (d) electronic reverse auctions; (e) the use of suppliers' lists; (f) framework agreements; (g) procurement of services; (h) evaluation and comparison of tenders and the use of procurement to promote industrial, social and environmental policies; (i) remedies and enforcement; (j) alternative methods of procurement; (k) community participation in procurement; (l) simplification and standardization of the Model Law; and (m) legalization of documents.

With respect to the topic of arbitration, the Commission had before it the reports of the Working Group on its forty-first and forty-second sessions.²⁸¹ The Commission noted that discussions had continued on the power of an arbitral tribunal to grant interim measures of protection on an ex-parte basis. In this context, a **draft text for revision of article 17, paragraph 7, of the UNCITRAL Model Law on International Commercial Arbitration**²⁸² was under discussion. A new article to be inserted in the Model Law, on the recognition and enforcement of interim measures of protection issued by an arbitral tribunal, tentatively numbered 17 *bis*, was also being considered. **The Commission also noted that, notwithstanding the wide divergence of views, the Working Group had agreed, at its forty-second session, to include a compromise text of the revised draft of paragraph 7 in draft article 17, on the basis of the principle that this paragraph would apply unless otherwise agreed by the parties, and that it should be made clear that preliminary orders had the nature of procedural orders, and not of awards, and that no enforcement procedure would be provided for such orders in article 17 *bis*.**

Concerning transport law, the Commission had before it the reports of the Working Group on its fourteenth and fifteenth sessions.²⁸³ It was noted that the Working Group had achieved progress on a number of difficult issues arising during the second reading of the draft instrument on the carriage of goods [wholly or partly] [by sea], including those regarding the basis of liability pursuant to the draft instrument, as well as the scope of application of the instrument and related freedom of contract issues.

With regard to its work on security interests, the Commission had before it the reports of the Working Group on its sixth and seventh sessions.²⁸⁴ The Commission observed that a complete consolidated set of legislative recommendations, which included, in addition to recommendations on inventory, equipment and trade receivables, recommendations on negotiable instruments, negotiable documents, bank accounts and proceeds from independent undertakings, would be before the Working Group at its eighth session. In addition, the Commission noted with appreciation the progress made by the Working Group in the coordination of its work with: (a) the Hague Conference on Private International Law, which had prepared the Convention on the Law Applicable to Certain Rights in respect of Securities held with an Intermediary;²⁸⁵ (b) the International Institute for the Unification of Private Law (Unidroit), which was preparing a draft convention on security and other rights in intermediated securities; (c) the World Bank, which was revising its Principles

²⁸¹ A/CN.9/569 and A/CN.9/573, respectively.

²⁸² *Official Records of the General Assembly, Fortieth Session, Supplement No. 17 (A/40/17)*, annex I. The Model Law has been published as a United Nations publication (Sales No. E.95.V.18).

²⁸³ A/CN.9/572 and A/CN.9/576, respectively.

²⁸⁴ A/CN.9/570 and A/CN.9/574, respectively.

²⁸⁵ Available at http://hcch.e-vision.nl/index_en.php?act=conventions.text&cid=72.

and Guidelines for Effective Insolvency and Creditor Rights Systems; and (d) the World Intellectual Property Organization.

Regarding the topic “Monitoring the implementation of the 1958 New York Convention”,²⁸⁶ the Commission recalled that it had requested the Secretariat to undertake its best efforts to produce for consideration by the Commission at its thirty-eighth session a preliminary analysis of the replies received by the Secretariat in response to the questionnaires circulated in connection with the project.²⁸⁷

(b) Sixth Committee

The Sixth Committee considered the item entitled “Report of the United Nations Commission on International Trade Law on the work of its thirty-eighth session” at its 1st, 2nd, 10th and 14th meetings, on 3, 4, 21 and 26 October 2005.

At the 1st meeting, Mr. Jorge Pinzón Sánchez (Colombia), Chairman of UNCITRAL at its thirty-eighth session, presented the report of the Commission.

During the debate on this item,²⁸⁸ delegations welcomed the approval by UNCITRAL of the draft convention on the use of electronic communication in international contracts, which would facilitate electronic commerce, create legal certainty and address problems related to fraud.

Several delegations commended the Commission on the progress it had achieved with regard to the various topics under consideration, including procurement, arbitration, transport law and security interests. Furthermore, several delegations stressed the importance of continuing the coordination and cooperation between UNCITRAL and other organizations in order to prevent duplication of work and inconsistencies in legal instruments.

Several delegations further welcomed the Commission’s plans to explore ways to combat commercial fraud and commended the Commission for cooperating with the United Nations Office on Drugs and Crime in this area.

In addition, support was expressed for the convening of an UNCITRAL congress in 2007 to review the results of the past and current work programmes as well as to elaborate topics for future work. A suggestion was also made that the Commission consider establishing a group to monitor the implementation of legal instruments already adopted by the Commission in order to identify the difficulties that States may experience.

Delegations stressed the importance of technical assistance programmes in the area of international trade law. In this context, support was expressed for the creation within the Secretariat of a unit on technical assistance and the efforts to collect and disseminate legal material related to the instruments adopted by the Commission.

²⁸⁶ For the text of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, see United Nations, *Treaty Series*, vol. 330, p. 3.

²⁸⁷ *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 17 (A/59/17)*, para. 84.

²⁸⁸ For a more exhaustive summary of the debate of the Sixth Committee with regard to this topic, see the website of the Sixth Committee (<http://www.un.org/ga/sixth/>) and the summary records (A/C.6/60/SR.1, 2, 10 and 14).

At the 10th meeting, on 21 October, the representative of Austria, on behalf of Algeria, Argentina, Australia, Austria, Azerbaijan, Belarus, Belgium, Belize, Brazil, Bulgaria, Canada, Chile, China, Colombia, Cyprus, the Czech Republic, the Democratic Republic of the Congo, Denmark, Ecuador, Estonia, Ethiopia, Fiji, Finland, France, Germany, Greece, Guatemala, Haiti, Hungary, India, Iran (Islamic Republic of), Ireland, Israel, Italy, Japan, Jordan, Kenya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malaysia, Mexico, Mongolia, Morocco, the Netherlands, New Zealand, Norway, the Philippines, Poland, Portugal, the Republic of Korea, Romania, the Russian Federation, Serbia and Montenegro, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine and the United Kingdom of Great Britain and Northern Ireland and Uruguay, subsequently joined by Bolivia, the Dominican Republic, the Gambia and Latvia, introduced a draft resolution entitled “Report of the United Nations Commission on International Trade Law on the work of its thirty-eighth session”.²⁸⁹

Also at the 10th meeting, on 21 October, the Chairman of the Committee introduced a draft resolution entitled “United Nations Convention on the Use of Electronic Communications in International Contracts”.²⁹⁰ At its 14th meeting, on 26 October, the Committee adopted the two draft resolutions.

(c) General Assembly

On 23 November 2005, the General Assembly, on the recommendation of the Sixth Committee, adopted resolution 60/20 on “Report of the United Nations Commission on International Trade Law on the work of its thirty-eighth session”, in which it took note of the report of the Commission on the work of its thirty-eighth session, and resolution 60/21 on the “United Nations Convention on the Use of Electronic Communications in International Contracts”.²⁹¹

17. Legal questions dealt with by the Sixth Committee and other related subsidiary bodies of the General Assembly

During the sixtieth session of the General Assembly, the Sixth Committee, in addition to the topics concerning the International Law Commission and the United Nations Commission on International Trade Law, discussed above, considered a wide range of topics. The work of the Sixth Committee and of other related subsidiary organs is described below, together with the relevant resolutions and decisions of the General Assembly adopt-

²⁸⁹ A/C.6/60/L.7.

²⁹⁰ A/C.6/60/L.8.

²⁹¹ For the text of the Convention, see section 3 of chapter IV below, “Treaties concerning international law concluded under the auspices of the United Nations”.

ed during 2005.²⁹² The resolutions of the General Assembly described in this section, unless otherwise indicated, were adopted during its sixtieth session on 23 November 2005 on the recommendation of the Sixth Committee.²⁹³

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

The United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law was established by the General Assembly at its twentieth session in 1965,²⁹⁴ to provide direct assistance in the field of international law by means of fellowship programmes, regional courses and symposia in international law, as well as through the preparation and dissemination of publications and other information relating to international law. Its continuation was subsequently authorized by the Assembly at its annual sessions until its twenty-sixth session, and thereafter biennially.²⁹⁵

(i) Advisory Committee on the Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

The Advisory Committee on the Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, which assists the Secretary-General in the performance of the functions entrusted to him by the General Assembly under this item, held its fortieth session on 17 October 2005 to consider the draft report of the Secretary-General.²⁹⁶ The discussion held during the fortieth session is reflected in the final report of the Secretary-General on this topic.²⁹⁷

(ii) Sixth Committee

The Sixth Committee considered this item at its 19th to 21st meetings, on 2, 3 and 9 November 2005, respectively.

During the debate, delegations remarked on the importance of international law and that the Programme of Assistance activities, as described in the report of the Secretary-General, including the fellowship programmes, regional courses and legal publications,

²⁹² For further information and documents regarding the work of the Sixth Committee and the other related subsidiary organs of the General Assembly mentioned in this section, see <http://www.un.org/ga/sixth/> and www.un.org/law/lindex.htm. For a more exhaustive summary of the debate of the Sixth Committee with regard to the various topics, see the website of the Sixth Committee (<http://www.un.org/ga/sixth/>) and the summary records.

²⁹³ The Sixth Committee adopts drafts resolutions which are recommended for adoption by the General Assembly. These resolutions are contained in the reports of the Sixth Committee to the General Assembly under the various agenda items. The Sixth Committee reports also contain information concerning the relevant documentation on the consideration of the items by the Sixth Committee.

²⁹⁴ General Assembly resolution 2099 (XX) of 20 December 1965.

²⁹⁵ For further information on the Programme, see <http://www.un.org/law/programmeofassistance/>.

²⁹⁶ A/AC.117/2005/L.1 and Corr.1.

²⁹⁷ A/60/441.

contributed to the spread of knowledge of the law, especially in developing countries. It was pointed out that the fellowship programmes also offered the young jurists selected the opportunity to network, thus furthering the development of their role in the enhancement of international law and the rule of law. Some delegations emphasized the need for increased voluntary contributions to the Programme of Assistance, in order that the achievements of the Programme may be augmented.

At the 19th meeting, on 2 November, the Chairman of the Advisory Committee on the Programme of Assistance introduced a draft resolution²⁹⁸ entitled “United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law”, which was adopted by the Committee at its 21st meeting.²⁹⁹

(iii) *General Assembly*

In its resolution 60/19, the General Assembly took *note with appreciation* of the report of the Secretary-General on the implementation of the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law and the guidelines and recommendations on future implementation of the Programme contained therein. It approved the guidelines and recommendations and authorized the Secretary-General to carry out in 2006 and 2007 the activities specified in the said report.

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

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

At its twenty-ninth session, in 1974, the General Assembly decided to establish an Ad Hoc Committee on the Charter of the United Nations to consider any specific proposals that Governments might make with a view to enhancing the ability of the United Nations to achieve its purposes, as well as other suggestions for the more effective functioning of the United Nations that might not require amendments to the Charter.³⁰⁰ At its thirtieth session, in 1975, the General Assembly decided to reconvene the Ad Hoc Committee as the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization to examine suggestions and proposals regarding the Charter and the strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of cooperation among all nations and the promotion of the rules of international law.³⁰¹ Since its thirtieth session, the General Assembly has reconvened the Special Committee every year.

²⁹⁸ A/C.6/60/L.5.

²⁹⁹ For the report of the Sixth Committee, see A/60/514. For the summary records, see A/C.6/60/SR.19, 20 and 21.

³⁰⁰ General Assembly resolution 3349 (XXIX) of 17 December 1974.

³⁰¹ General Assembly resolution 3499 (XXX) of 15 December 1975.

The Special Committee met at United Nations Headquarters from 14 to 18 March 2005. The issues considered by the Special Committee during this session were: maintenance of international peace and security, in particular the questions of sanctions, the legal basis for United Nations peacekeeping operations, and the strengthening of the role of the Organization; peaceful settlement of disputes; proposals concerning the abolition of the Trusteeship Council; the publications *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*; and working methods of the Special Committee and the identification of new subjects.

In its report, the Special Committee made several recommendations to the General Assembly.³⁰² The Special Committee recommended, *inter alia*, that, at its sixtieth session, the General Assembly continue to consider the results of the *ad hoc* expert group meeting established by resolution 52/162 concerning the effects of sanctions on third States, taking into account the different views expressed on the matter. It also recommended that the Assembly address further the question of the implementation of the provisions of the Charter relating to the assistance to third States affected by the application of sanctions, and that it recognize the value of considering measures to ensure the revitalization of the General Assembly in order to effectively and efficiently exercise the functions assigned to it under the Charter. It further recommended that the Assembly encourage voluntary contributions to the trust funds concerning the *Repertory* and the *Repertoire* and that cooperation with academic institutions for the preparation of studies for both publications be enhanced. Finally, the Special Committee also submitted to the Assembly its decision relating to new subjects, in which the Special Committee “expresse[d] its readiness to engage, as appropriate, in the implementation of any decisions that may be taken at the High-level Plenary Meeting of the sixtieth session of the General Assembly in September 2005 that concern the Charter of the United Nations and any amendments thereto.”

At its 248th meeting, on 18 March 2005, the Special Committee adopted the report of its 2005 session.

(ii) *Sixth Committee*

The Sixth Committee considered this agenda item at its 7th, 8th and 21st meetings, on 14 and 19 October and on 9 November 2005. The Chairman of the Special Committee during its 2005 session introduced its report.

Delegations welcomed the report of the Special Committee and recalled that it had indicated its availability to consider any proposals relating to the reform of the Charter which arose from the High-level plenary meeting of the General Assembly held in September 2005.³⁰³

At the 21st meeting, on 9 November, the representative of Egypt introduced a draft resolution entitled “Report of the Special Committee on the Charter of the United Nations

³⁰² *Official Records of the General Assembly, Sixtieth Session, Supplement No. 33 (A/60/33)*.

³⁰³ See General Assembly resolution 60/1 of 16 September 2005 on the “2005 World Summit Outcome”.

and on the Strengthening of the Role of the Organization”,³⁰⁴ which was adopted by the Committee at the same meeting.³⁰⁵

(iii) *General Assembly*

In its resolution 60/23, entitled “Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization”, the General Assembly took note of the report of the Special Committee and of the report of the Secretary-General on the *Repertory* and the *Repertoire*.³⁰⁶

In addition, the Assembly, *inter alia*, requested that during its next session in 2006, the Special Committee continue its consideration of all proposals concerning the question of the maintenance of international peace and security in all its aspects in order to strengthen the role of the Organization, continue to consider, on a priority basis, the question of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter, keep on its agenda the question of the peaceful settlement of disputes between States, and continue to consider, on a priority basis, ways and means of improving its working methods and enhancing its efficiency with a view to identifying widely acceptable measures for future implementation. Furthermore, the Assembly requested the Special Committee to consider, as appropriate, any proposal referred to it by the General Assembly in the implementation of the decisions of the High-level Plenary Meeting of the sixtieth session of the Assembly in September 2005 that concern the Charter and any amendments thereto.

The Assembly also recognized the important role of the International Court of Justice in adjudicating disputes among States and the value of its work, as well as the importance of having recourse to the Court in the peaceful settlement of disputes. In this regard, it stressed the desirability of finding practical ways and means to strengthen the Court, taking into consideration the needs resulting from its workload.

Finally, the General Assembly welcomed the establishment of the trust fund to eliminate the backlog of the *Repertory*, encouraged the enhanced cooperation with academic institutions and the use of the internship programme for the preparation of studies, and endorsed the efforts of the Secretary-General to eliminate the backlog in the *Repertoire*.

(c) **Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel**

(i) *Ad Hoc Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel*

The Ad Hoc Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel held its fourth session from 11 to 15 April 2005, with a mandate to expand the scope of legal protection under the Convention

³⁰⁴ A/C.6/60/L.13.

³⁰⁵ For the report of the Sixth Committee, see A/60/517. For the summary records, see A/C.6/60/SR.7, 8 and 21.

³⁰⁶ A/60/124.

on the Safety of United Nations and Associated Personnel,³⁰⁷ including by the means of a legal instrument.³⁰⁸ In its report on the work of its fourth session to the General Assembly,³⁰⁹ the Ad Hoc Committee recommended that work to expand the scope of legal protection under the Convention continue during the sixtieth session of the General Assembly, within the framework of a working group of the Sixth Committee. The Ad Hoc Committee also recommended that the revised Chairman's text of a draft optional protocol to the Convention, as contained in annex I to its report, be used as the basis of work of the working group, and that the proposal by Costa Rica concerning the relationship between the Convention and international humanitarian law, in annex II. A, be considered by the working group separately.

(ii) *Sixth Committee*

At its 1st meeting, on 3 October 2005, the Sixth Committee established a working group in order to continue work on the matter, which held four meetings, on 4, 5 and 10 October 2005, as well as informal consultations on 5, 6 and 7 October. Informal consultations on the text of a draft optional protocol continued among interested delegations during the session of the Sixth Committee with a view to finalizing discussions on the outstanding issues.

The Sixth Committee considered the item at its 8th, 9th and 22nd meetings, on 19 and 20 October and 16 November 2005. At the 8th meeting, the Chairman of the Ad Hoc Committee and the Working Group introduced the respective reports.³¹⁰

During the debate on this item, delegations condemned the continuing attacks against United Nations and associated personnel and urged States to ensure that such crimes do not go unpunished and that the perpetrators are brought to justice. While several delegations welcomed the inclusion by the Secretary-General of core provisions of the Convention in status-of-forces, status-of-mission and host country agreements, the importance of universal acceptance of the Convention was also emphasized. Furthermore, delegations highlighted the urgent need to expand the scope of legal protection under the Convention to include a broader category of operations. In this connection, several delegations expressed their support for the inclusion of the term "peacebuilding" in a draft protocol since such operations contained an inherent element of risk. However, other delegations considered that the term was too ambiguous to be used in a law-enforcement instrument. Several delegations also expressed support for the proposal to expand the scope of protection to operations undertaken for the purpose of delivering emergency humanitarian assistance in situations of natural disaster. However, the need to include a mechanism of non-applicability of the draft protocol to such situations, when no risk was present, was also stressed. A few delegations were of the view that situations of natural disaster should not be included at all in the draft protocol.

³⁰⁷ United Nations, *Treaty Series*, vol. 2051, p. 363.

³⁰⁸ General Assembly resolution 59/47 of 2 December 2004.

³⁰⁹ *Official Records of the General Assembly, Sixtieth Session, Supplement No. 52* and corrigendum (A/60/52 and Corr.1).

³¹⁰ *Ibid.*, and A/C.6/60/L.4.

While delegations acknowledged the duty of States to protect United Nations and associated personnel, the reciprocal duty of such personnel to respect and obey the law of the host countries was also emphasized. Delegations also stressed that while a satisfactory legal framework for the protection of United Nations personnel was essential for the effective execution of United Nations operations, the success of such operations also depended on their adequate financing and support.

At the 22nd meeting, on 16 November 2005, the Chairman of the Ad Hoc Committee and of the Working Group introduced a draft resolution entitled “Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel”, to which was annexed the text of the Optional Protocol,³¹¹ which was adopted at the same meeting.³¹²

(iii) *General Assembly*

In its resolution 60/42 of 8 December 2005, entitled “Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel”, the General Assembly adopted the said Optional Protocol contained in its annex, and invited all Members States to become parties thereto. In the resolution, the General Assembly also reaffirmed, in the context of the Convention and its Optional Protocol, the importance of maintaining the integrity of international humanitarian law, as well as the obligation of all humanitarian personnel and United Nations and associated personnel to respect the national laws of the country in which they are operating, in accordance with international law and the Charter of the United Nations.

(d) **Measures to eliminate international terrorism**

(i) *Ad hoc Committee established by General Assembly resolution 51/210 of 17 December 1996*

In 1996, the General Assembly, in resolution 51/210, decided to establish an Ad Hoc Committee to elaborate an international convention for the suppression of terrorist bombings and, subsequently, an international convention for the suppression of acts of nuclear terrorism, to supplement related existing international instruments, and thereafter to address means of further developing a comprehensive legal framework of conventions dealing with international terrorism.

In accordance with General Assembly resolution 59/46 of 2 December 2004, the Ad Hoc Committee held its ninth session from 28 March to 1 April 2005 in order to continue elaborating the draft comprehensive convention on international terrorism and to resolve the outstanding issues relating to the elaboration of the draft international convention for the suppression of acts of nuclear terrorism as a means of further developing a comprehensive legal framework of conventions dealing with international terrorism, and to keep on its agenda the question of convening a high-level conference under the auspices of the

³¹¹ A/C.6/60/L.11. For the text of the Optional Protocol, see section 4 of chapter IV below, “Treaties concerning international law concluded under the auspices of the United Nations”.

³¹² For the report of the Sixth Committee, see A/60/518. For the summary records, see A/C.6/60/SR.8, 9 and 22.

United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.³¹³

At its meeting on 1 April, the Ad hoc Committee finalized the draft International Convention for the Suppression of Acts of Nuclear Terrorism and decided to recommend to the General Assembly the adoption during its resumed fifty-ninth session, of a draft resolution to which the draft Convention was annexed.³¹⁴

(ii) *Sixth Committee*

At its 1st meeting, on 3 October 2005, the Sixth Committee established a working group with a view to finalizing the draft comprehensive convention on international terrorism and to keep on its agenda the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations. The Working Group held three plenary meetings, as well as informal consultations and bilateral contacts with interested delegations.³¹⁵

The Sixth Committee considered this item at its 3rd to 6th, 10th and 23rd meetings, on 6, 7, 10 and 21 October and on 29 November 2005. At the 3rd and 10th meetings, the Chairman of the Ad Hoc Committee and the Working Group introduced the reports of the Ad Hoc Committee and of the Working Group, respectively.

During the debate in the Sixth Committee, delegations condemned terrorism in all its forms and manifestations committed by whomever, wherever and for whatever purpose, and stressed that it constituted a serious threat to international peace and security, economic development and human rights. Several delegations rejected any identification of terrorism with a single race, culture or religion and stressed the need for enhancing dialogue and broadening understanding amongst civilizations. In particular, exchanges between leaders of religious communities were encouraged to enhance inter-faith dialogue. Several delegations reiterated that terrorism required a coordinated response, at the national, regional and international levels. In this context, the central role of the United Nations in combating terrorism was underlined, considering its unique legitimacy in legislative matters. The importance of bilateral, subregional and regional efforts in combating terrorism was also highlighted. Some delegations appealed to donor countries to support regional initiatives in the area of counter-terrorism and called for strengthened capacity-building measures in this area.

While delegations commended the role of United Nations Office of Drugs and Crime in assisting States in their ratification and implementation of counter-terrorism conventions, the need to further strengthen capacity-building measures in this area was highlighted. Several delegations stressed the importance of combating terrorism in a holistic

³¹³ For the report of the Ad Hoc Committee, see *Official Records of the General Assembly, Sixtieth Session, Supplement No. 37 (A/60/37)*.

³¹⁴ Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 (International Convention for the Suppression of Acts of Nuclear Terrorism) (A/59/766). See also the regular report of the Ad Hoc Committee (A/60/37), para. 19.

³¹⁵ For the report of the Working Group, see A/C.6/60/L.6.

manner, and in particular, addressing its root causes. Furthermore, the link between terrorism and transnational organized crime was highlighted.

Support was expressed for the Secretary-General's proposed five point counter-terrorism strategy. However, it was stated by some delegations that although the elements and objectives identified by the Secretary-General could form a basis for developing such a strategy, the list was not exhaustive and required careful consideration by Member States. It was suggested that such a strategy should include the following elements: completion of the draft comprehensive convention on international terrorism, implementation of the measures adopted by the Security Council under its relevant resolutions, and addressing the root causes of terrorism.

Several delegates also commented on the draft comprehensive convention on international terrorism and on the proposal concerning the convening of a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestation. In addition, references were made to other proposals, including the establishment of an international counter-terrorism centre, the formulation of an international counter-terrorism code of conduct, and the convening of a high-level special session of the General Assembly on cooperation against terrorism.

At the 23rd meeting, on 29 November, the representative of Poland, on behalf of the Bureau of the Sixth Committee, introduced a draft resolution entitled "Measures to eliminate international terrorism",³¹⁶ which was adopted at the same meeting.³¹⁷

(iii) *General Assembly*

At its resumed fifty-ninth session, on 13 April 2005, the General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism. The Assembly also requested the Secretary-General to open the Convention for signature at United Nations Headquarters in New York, from 14 September 2005 to 31 December 2006, and called upon all States to sign and ratify, accept, approve or accede to the Convention.³¹⁸

On 8 December 2005, during its sixtieth session, the General Assembly adopted resolution 60/43 on "Measures to eliminate international terrorism", in which it, *inter alia*, reiterated its call upon States to refrain from financing, encouraging, providing training for or otherwise supporting terrorist activities, and urged States to ensure that any person within their territory who **wilfully provide or collect funds for the benefit of persons who commit, attempt to commit, facilitate or participate in the commission of terrorist acts, be punished by penalties consistent with the grave nature of such acts.** Furthermore, the Assembly reminded States of their obligations under relevant international counter-terrorism conventions and protocols, and Security Council resolutions, to ensure that perpetrators of terrorist acts were brought to justice. It welcomed the adoption and opening for signature of the International Convention for the Suppression of Acts of Nuclear Ter-

³¹⁶ A/C.6/60/L.12.

³¹⁷ For the report of the Sixth Committee, see A/60/519. For the summary records, see A/C.6/60/SR.3-6, 10 and 23.

³¹⁸ General Assembly resolution 59/290 of 13 April 2005.

rorism, and urged all States to consider becoming parties to it as well as to other relevant instruments. It also called upon all States to enact the 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.

(e) Report of the Committee on Relations with the Host Country

(i) *Committee on Relations with the Host Country*

The Committee on Relations with the Host Country was established by the General Assembly at its twenty-sixth session in 1971 to deal with a wide range of issues concerning the relationship between the United Nations and the United States as the host country, including questions pertaining to security of the missions and their personnel, privileges and immunities, immigration and taxation, housing, transportation and parking, insurance, education and health, as well as public relations issues with New York as the host city.³¹⁹ In 2005, the Committee was composed of the following 19 Member States: Bulgaria, Canada, China, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, France, Honduras, Hungary, Iraq, Libyan Arab Jamahiriya, Malaysia, Mali, Russian Federation, Senegal, Spain, United Kingdom and United States.

In accordance with General Assembly resolution 59/42 of 2 December 2004, the Committee reconvened in 2005 and held four meetings: its 223rd meeting on 15 April, its 224th meeting on 6 July, its 225th meeting on 28 September and its 226th on 28 October 2005.

During its 2005 session, the Committee dealt with the following topics: transportation (use of motor vehicles, parking and related matters), acceleration of immigration and customs procedures, entry visas issued by the host country, exemption from taxes, and host country travel regulations.

At its 226th meeting, on 28 October 2005, the Committee approved various recommendations and conclusions dealing with the said matters.³²⁰

(ii) *Sixth Committee*

The Sixth Committee considered this item at its 21st meeting, on 9 November 2005, during which the Chairman of the Committee on Relations with the Host Country introduced the report of the Committee and the draft resolution on this item.³²¹

During the debate, appreciation was expressed for the continued efforts of the host country to fulfill its obligations under the Convention on the Privileges and Immunities of the United Nations of 13 February 1946³²² and the Headquarters Agreement,³²³ to provide

³¹⁹ General Assembly resolution 2819 (XXVI) of 15 December 1971.

³²⁰ *Official Records of the General Assembly, Sixtieth Session, Supplement No. 26 (A/60/26)*.

³²¹ A/C.6/60/L.15.

³²² United Nations, *Treaty Series*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1).

³²³ See General Assembly resolution 169 (II) of 31 October 1947.

full facilities for the normal functioning of the missions accredited to the United Nations. With respect to the Parking Programme for Diplomatic Vehicles adopted in 2002, hope was expressed that various shortcomings in its implementation would be addressed by the host country and that it would be implemented consistent with international law, in a fair, non-discriminatory and effective manner. Some delegations also referred to instances of delays in the issuance of entry visas, the question of travel restrictions, and urged the host country to resolve existing problems in accordance with the Headquarters Agreement.

The Host Country confirmed its commitment to fulfill its obligations under international law and noted, in particular, the success achieved in the implementation of the Parking Programme for Diplomatic Vehicles.

During the same meeting, the representative of Cyprus, on behalf of other sponsor delegations, introduced a draft resolution entitled "Report of the Committee on Relations with the Host Country", which was adopted by the Sixth Committee.³²⁴

(iii) *General Assembly*

In its resolution 60/24, the General Assembly endorsed the recommendations and conclusions made by the Committee on Relations with the Host Country contained in its report.³²⁵

In addition, the Assembly considered that the maintenance of appropriate conditions for the normal work of the delegations and the missions accredited to the United Nations, as well as the observance of their privileges and immunities, were in the interest of the United Nations and all Member States. Therefore it requested the host country to continue to solve, through negotiations, problems that might arise and to take all measures necessary to prevent any interference with the functioning of missions.

The Assembly also noted that the Committee would continue to review the implementation of the Parking Programme for Diplomatic Vehicles, with a view to addressing the problems experienced by some permanent missions in that respect, and continuously ensuring its proper implementation in a manner that is fair, non-discriminatory, effective and consistent with international law.

Further, the General Assembly noted that during the reporting period, some travel restrictions previously imposed by the host country on staff of certain missions and staff members of the Secretariat of certain nationalities had been removed, and requested the host country to consider removing the remaining travel restrictions.

Finally, the Assembly noted that the Committee anticipated that the host country would enhance its efforts to ensure the issuance, in a timely manner, of entry visas to representatives of Member States for travel to New York on United Nations business, as well as to facilitate the participation of representatives of Member States in other United Nations meetings.

³²⁴ For the report of the Sixth Committee, see A/60/520. For the summary records, see A/C.6/60/SR.21.

³²⁵ *Official Records of the General Assembly, Sixtieth Session, Supplement No. 26 (A/60/26)*, para. 72.

(f) Observer status in the General Assembly

(i) Sixth Committee

The Sixth Committee considered requests for observer status in the General Assembly by the Latin American Integration Association, the Common Fund for Commodities, the Hague Conference on Private International Law, and the Ibero-American Conference.

The question of observer status for the Latin American Integration Association and the Common Fund for Commodities was considered at the Committee's 2nd and 6th meetings, on 4 and 10 October 2005.³²⁶ The question of the observer status for the Hague Conference on Private International Law was considered at the 16th and 19th meetings of the Sixth Committee, on 28 October and 2 November.³²⁷ Finally, the observer status for the Ibero-American Conference was considered at the 19th and 20th meetings of the Committee on 2 and 3 November 2005.³²⁸

(ii) General Assembly

In its resolutions 60/25, 60/26, 60/27 and 60/28, the General Assembly granted observer status to the Latin American Integration Association, the Common Fund for Commodities, the Hague Conference on Private International Law, and the Ibero-American Conference, respectively.

18. Ad hoc international criminal tribunals³²⁹

(a) Organization of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR)

(i) Organization of ICTY

Judge Theodor Meron (United States) continued to act as President of the Tribunal and Judge Fausto Pocar (Italy) acted as Vice-President until 17 November 2005, at which date Judge Pocar and Judge Kevin Parker (Australia) were elected President and Vice-President of the Tribunal for a two-year term, respectively.

In November 2005, some changes occurred in the membership of the Tribunal. Judge Amin El Mahdi (Egypt) was not re-elected as a permanent judge and Judge Florence Nde-

³²⁶ For the reports of the Sixth Committee, see A/60/521 and 522, respectively. For the summary records, see A/C.6/60/SR.2 and 6.

³²⁷ For the report of the Sixth Committee, see A/60/533. For the summary records, see A/C.6/60/SR.16 and 19.

³²⁸ For the report of the Sixth Committee, see A/60/534. For the summary records, see A/C.6/60/SR.19 and 20.

³²⁹ This section covers the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), which were the subject of resolutions of the Security Council and the General Assembly. Further information regarding the Judgments and Decisions of the ICTY and ICTR is contained in chapter VII below.

pele Mwachande Mumba (Zambia) did not stand for re-election; they were replaced with then *ad litem* Judge Christine Van den Wyngaert (Belgium) and Judge Bakone Melema Moloto (South Africa), respectively.

Thus, at the end of 2005, the 14 permanent judges of the Tribunal were as follows: Carmel A. Agius (Malta), Jean-Claude Antonetti (France), Iain Bonomy (United Kingdom), O-gon Kwon (Republic of Korea), Liu Daqun (China), Theodor Meron (United States), Bakone Melema Moloto (South Africa), Alphonsus Martinus Maria Orié (Netherlands), Kevin Parker (Australia), Fausto Pocar (Italy), Patrick Lipton Robinson (Jamaica), Wolfgang Schomburg (Germany), Mohamed Shahabuddeen (Guyana) and Christine Van den Wyngaert (Belgium).

Ad litem Judges Ivana Janu (Czech Republic), Chikako Taya (Japan), Volodymyr Vasylenko (Ukraine) and Carmen Maria Argibay (Argentina) finished their terms of service with the Tribunal, and György Szénási (Hungary) resigned in May 2005.

The *ad litem* judges during this period have been Joaquín Martín Canivell (Spain), Vonimbolana Rasoazanany (Madagascar), Bert Swart (Netherlands), Krister Thelin (Sweden), Christine Van Den Wyngaert (Belgium), Hans Henrik Brydensholt (Denmark), Albin Eser (Germany), Claude Hanoteau (France), Janet Nosworthy (Jamaica) and Frank Höpfel (Austria).

(ii) *Organization of ICTR*

On 21 May 2005, at the Judges' annual Plenary Meeting of the ICTR, Judge Erik Møse (Norway) was re-elected as President of the Tribunal for a second two-year term. Judge Arlette Ramaroson (Madagascar) was elected Vice-President, succeeding Judge Andréia Vaz (Senegal).

The composition of the Tribunal during 2005 was as follows:

Trial Chamber I: Judge Erik Møse (Norway), Judge Jai Ram Reddy (Fiji) and Judge Sergei Alekseevich Egorov (Russian Federation);

Trial Chamber II: Judge William Hussein Sekule (United Republic of Tanzania), Judge Arlette Ramaroson (Madagascar) and Judge Asoka de Silva (Sri Lanka);

Trial Chamber III: Judge Andréia Vaz (Senegal), replaced by Judge Inés Mónica Weinberg de Roca (Argentina) on 15 August 2005, Judge Khalida Rashid Khan (Pakistan) and Judge Dennis Charles Michael Byron (Saint Kitts and Nevis).

The *ad litem* judges were Judge Solomy Balungi Bossa (Uganda), Judge Flavia Lattanzi (Italy), Judge Lee Gacugia Muthoga (Kenya), Judge Florence Rita Arrey (Cameroon), Judge Emile Francis Short (Ghana), Judge Karin Hökberg (Sweden), Judge Taghrid Hikmet (Jordan), Judge Seon Ki Park (Republic of Korea) and Judge Gberdao Gustave Kam (Burkina Faso).

(iii) *Composition of the Appeals Chamber*

The two judges of ICTR who were serving in the Tribunal's Appeal Chamber were Judges Mehmet Güney (Turkey) and Inés Mónica Weinberg de Roca (Argentina). Judge Andresia Vaz (Senegal) was assigned on 15 July 2005, by order of President Møse, to replace Judge Weinberg de Roca, the replacement being effective on 15 August 2005.

At the beginning of 2005, the seven-member bench of the shared Appeals Chamber of the two Tribunals was composed of Judge Theodor Meron (United States), Judge Mohamed Shahabuddeen (Guyana), Judge Florence Mumba (Zambia), Judge Mehmet Güney (Turkey), Judge Fausto Pocar (Italy), Judge Wolfgang Schomburg (Germany) and Judge Inés Mónica Weinberg de Roca (Argentina).

At the end of 2005,³³⁰ the members of the Appeals Chamber were Judge Fausto Pocar (Italy), Judge Mohamed Shahabuddeen (Guyana), Judge Mehmet Güney (Turkey), Judge Liu Daqun (China), Judge Andresia Vaz (Senegal), Judge Theodor Meron (United States) and Judge Wolfgang Schomburg (Germany).

(b) General Assembly

On 24 August 2005, during its fifty-ninth session, the General Assembly elected 27 *ad litem* judges to the ICTY for a four-year term of office beginning on 24 August 2005.³³¹

On 23 December 2005, the General Assembly adopted, on the recommendation of the Fifth Committee, resolution 60/240 entitled “Second performance report for the biennium 2004–2005 on 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” and resolution 60/242 entitled “Second performance report for the biennium 2004–2005 on 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”, in which the Assembly took note of the said reports,³³² and of the related report of the Advisory Committee on Administrative and Budgetary Questions.³³³

On the same date, the General Assembly also adopted resolution 60/241 entitled “Financing 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” and resolution 60/243 entitled “Financing 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”, in which the Assembly endorsed the respective budgets of the two Tribunals for the biennium 2006–2007.

³³⁰ Following the changes mentioned above.

³³¹ General Assembly decision 59/406 C, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 49 (A/59/49)*.

³³² A/60/573 and A/60/575, respectively.

³³³ A/60/591.

(c) Security Council

In view of the fact that 27 *ad litem* judges of the ICTY had their term of office expiring on 11 June 2005, the Security Council adopted resolution 1597 (2005) on 20 April 2005, amending the Statute of the Tribunal, allowing those *ad litem* judges to be re-elected.

During the year 2005, the Security Council also adopted several resolutions concerning the ICTY, dealing in particular with questions relating to appointments and nominations of *ad litem* judges.³³⁴

(d) Amendments to the Rules of Procedure and Evidence of the ICTY³³⁵

On 15 February 2005, the thirty-first Plenary Session of the Judges amended rules 11 *bis* and 124 of the Rules of Procedure and Evidence (the Rules) of the Tribunal.

In revising rule 11 *bis*, the Judges established a Bench of three permanent judges selected from the Trial Chambers. The Referral Bench was identified as the body “which solely and exclusively shall determine whether a case should be referred to the authorities of a State: i) in whose territory the crime was committed; or ii) in which the accused was arrested; or iii) having jurisdiction and being willing and adequately prepared to accept such a case, so that those authorities should forthwith refer the case to the appropriate court for trial within that State.” The rule revision further established the appeal process, as a matter of right, from a decision of the Referral Bench.

Rule 11 *bis* of the Rules allows for a case in which there is a confirmed indictment to be referred to the authorities of a State with the jurisdiction, the willingness, and the ability to prosecute. Beyond the rule’s critical function in helping the Tribunal achieve its completion strategy, referral proceedings have addressed a number of important legal issues under international law, including the determination of what is required for a “fair trial” in a national court.

Regarding the amendment to rule 124, it clarified that the President of the Tribunal was only required to confer with members of the Bureau³³⁶ and permanent judges of the sentencing Chamber who remain Judges of the Tribunal on questions of pardon and commutation.

On 11 March 2005, rule 28 was amended to allow the inclusion of *ad litem* judges on the duty roster.

(i) Proceedings for referral of cases under rule 11 bis

Rule 11 *bis* in its current form provides as follows:

(A) After an indictment has been confirmed and prior to the commencement of trial, irrespective of whether or not the accused is in the custody of the Tribunal, the Presi-

³³⁴ See Security Council resolutions 1581 (2005) of 18 January 2005, 1613 (2005) of 26 July 2005, and 1629 (2005) of 30 September 2005.

³³⁵ This section (d) was prepared by the Office of the Registrar of the ICTY.

³³⁶ A body composed of the President, the Vice-President and the Presiding Judges of the Trial Chambers.

dent may appoint a bench of three permanent judges selected from the Trial Chambers (hereinafter referred to as the Referral Bench), which solely and exclusively shall determine whether the case should be referred to the authorities of a State:

- (i) in whose territory the crime was committed; or
- (ii) in which the accused was arrested; or
- (iii) having jurisdiction and being willing and adequately prepared to accept such a case, so that those authorities should forthwith refer the case to the appropriate court for trial within that State.

(B) The Referral Bench may order such referral *proprio motu* or at the request of the Prosecutor, after having given to the Prosecutor and, where applicable, the accused, the opportunity to be heard and after being satisfied that the accused will receive a fair trial and that the death penalty will not be imposed or carried out.

(C) In determining whether to refer the case in accordance with paragraph (a), the Referral Bench shall, in accordance with Security Council resolution 1534 (2004), consider the gravity of the crimes charged and the level of responsibility of the accused.

(D) Where an order is issued pursuant to this rule:

- (i) the accused, if in the custody of the Tribunal, shall be handed over to the authorities of the State concerned;
- (ii) the Referral Bench may order that protective measures for certain witnesses or victims remain in force;
- (iii) the Prosecutor shall provide to the authorities of the State concerned all of the information relating to the case which the Prosecutor considers appropriate and, in particular, the material supporting the indictment;
- (iv) the Prosecutor may send observers to monitor the proceedings in the national courts on her behalf.

(E) The Referral Bench may issue a warrant for the arrest of the accused, which shall specify the State to which he is to be transferred to trial.

(F) At any time after an order has been issued pursuant to this rule and before the accused is found guilty or acquitted by a national court, the Referral Bench may, at the request of the Prosecutor and upon having given to the State authorities concerned the opportunity to be heard, revoke the order and make a formal request for deferral within the terms of rule 10.

(G) Where an order issued pursuant to this rule is revoked by the Referral Bench, it may make a formal request to the State concerned to transfer the accused to the seat of the Tribunal and the State shall accede to such a request without delay in keeping with article 29 of the Statute. The Referral Bench or a Judge may also issue a warrant for the arrest of the accused.

(H) A Referral Bench shall have the powers of, and insofar as applicable shall follow the procedures laid down for, a Trial Chamber under the Rules.

(I) An appeal by the accused or the Prosecutor shall lie as of right from a decision of the Referral Bench whether or not to refer a case. Notice of appeal shall be filed within fifteen days of the decision unless the accused was not present or represented when the

decision was pronounced, in which case the time-limit shall run from the date on which the accused is notified of the decision.

a. The referral of *Prosecutor v. Stanković*

1. The actual course of referral proceedings is best illustrated by the case of *Prosecutor v. Stanković*,³³⁷ the first motion for referral decided upon by the Referral Bench. Stanković, a Bosnian Serb who had been in the custody of ICTY since 10 July 2002, was charged with rape, enslavement and outrages upon personal dignity as crimes against humanity and violations of the laws or customs of war, which allegedly took place in the eastern Bosnian town of Foča in 1992. In a motion filed on 21 September 2004, the Prosecutor requested referral of the Stanković case to the authorities of Bosnia and Herzegovina. The Referral Bench thereupon ordered both the Prosecution and Stanković to file written submissions with respect to the propriety of referral of the case. The Government of Bosnia and Herzegovina, being the State to which referral was sought, was also invited to participate in the proceedings, including a hearing which was held on 4 March 2005.

2. On 17 May 2005, the Referral Bench rendered its very first decision, referring the Stanković case to the authorities of Bosnia and Herzegovina for trial, and ordering the transfer of the accused to Bosnia and Herzegovina within 30 days of the decision becoming final and binding. In doing so, the Referral Bench concluded that referral to the authorities of Bosnia and Herzegovina should be ordered “having considered the matters raised, in particular the gravity of the criminal conduct alleged against the Accused in the present Indictment and the level of responsibility of the Accused, and being satisfied on the information presently available that the Accused should receive a fair trial and that the death penalty will not be imposed or carried out . . .”.

3. Radovan Stanković appealed against the Referral Bench’s Decision. On 1 September 2005, the Appeals Chamber dismissed Stanković’s appeal, and on 29 September 2005 he was transferred to Bosnia and Herzegovina.

b. Category of referral cases

According to rule 11 *bis* (C), the Referral Bench shall “consider the gravity of the crimes charged and the level of responsibility of the accused”. Consideration of these criteria must be based on the allegations that are contained in the operative indictment at the time of the Referral Bench’s decision, and not on the indictment as it was when the request for referral was made. Subsequent amendments of an indictment do not require the Prosecution to submit a new motion for referral based on the amended indictment. However, such amendments have given rise to the argument that the Prosecution was deliberately downplaying the gravity of the crimes in order to suit referral by tailoring an accused’s alleged responsibility and narrowing the geographical scope of the alleged crimes. Furthermore, the Referral Bench has held that it is only the individual conduct of an accused which has to be considered for the purposes of referral, not the entire scope of a joint criminal enterprise in which the accused allegedly participated.

The Referral Bench enjoys a wide margin of discretion when deciding whether the two criteria of “gravity of the crimes charged” and “level of responsibility of the accused”

³³⁷ Case No. IT-96-23/2.

militate in favour or against referral of a case. These criteria may separately, or in combination, persuade the Referral Bench to refer a case, or to refrain from doing so. These considerations are not exclusive of other relevant circumstances, and neither of them is necessarily determinative. In the *Trbić* case,³³⁸ the alleged involvement of the accused in the Srebrenica genocide of several thousand Muslim men did not prevent referral of the case for trial in Bosnia and Herzegovina in view of the “limited authority” enjoyed by *Trbić* in these events. On the other hand, the Referral Bench in *Dragomir Milošević*³³⁹ held that this accused’s high rank—subordinate only to Karadžić and Mladić—and his alleged responsibility for a campaign of sniping and shelling of the Sarajevo civilian population required a trial at ICTY. Likewise, the alleged level of responsibility of *Rasim Delić*³⁴⁰—which included his position as the most senior military officer in the Army of Bosnia and Herzegovina—required that the case be tried before the Tribunal. The decision of the Referral Bench in this regard is guided by the purpose to give effect to the efforts to concentrate on trying the “most senior leaders” suspected of being most responsible for the crimes within the ICTY jurisdiction. The notion of “most senior leaders” is not restricted to individuals who are “architects” of an “overall policy” which forms the basis of alleged crimes. Further, there need not be a nexus between leadership responsibility for the most serious crimes and a broad geographic area.

c. State of referral

According to article 9 of the ICTY Statute, ICTY and national courts have “concurrent jurisdiction” in war crimes cases although ICTY may at any time request national courts to defer to its competence. As a correlate to this exercise of primacy, ICTY also has the authority to restore jurisdiction of the competent State or States. In doing so, ICTY is not bound by rules of inter-State cooperation in criminal matters and other rules applicable in a horizontal relationship between States. Rule 11 *bis* (A) provides the Referral Bench with three options as to the State to which a case can be referred: (1) the State in whose territory the alleged crimes were committed; or (2) the State in which the accused was arrested; or (3) any State having jurisdiction over the alleged crimes and willing to exercise it. This provision allows for the referral of a case to any State in the world, although no ICTY case has yet been referred to a State outside the former Yugoslavia.

As there is no hierarchy among the criteria mentioned in rule 11 *bis* (A), the Referral Bench retains discretion as to the choice of the State of referral. The Referral Bench will usually follow the recommendation of the Prosecutor unless there are “significant problems” with referral to that State. The defence and States have no standing to file a formal request for referral to a particular State, although this has repeatedly occurred.

In determining the State of referral, the Referral Bench has consistently chosen the State to which the case against the accused had the strongest nexus. For example, it found that the link to the State where the alleged crimes were committed and whose citizens had been victims was stronger than the link to the State whose citizenry the accused belongs to or on whose territory he surrendered. In one case, however, these considerations were out-

³³⁸ Case No. IT-05-88/1.

³³⁹ Case No. IT-98-29/1.

³⁴⁰ Case No. IT-04-83.

weighed by humanitarian considerations regarding the health of the accused. The Referral Bench has accepted that rendering justice as geographically close as possible to the victims is a consideration that may guide its discretion. Other considerations include whether the State of referral can provide a fair and expeditious trial, safety for witnesses, and guarantee the availability of evidence.

As is evident from rule 11 *bis* (A), the Referral Bench may refer a case only to a State, not to a specific court within that State. It is for the sovereign State to whose jurisdiction a case is referred to decide which court is competent to hear the case. Bosnia and Herzegovina has enacted legislation to the effect that cases referred from the ICTY will be tried before the War Crimes Chamber within the **State Court of Bosnia and Herzegovina (BiH Court) in Sarajevo**. Notwithstanding that the War Crimes Chamber is partly composed of international judges, the BiH Court is still a “national court” of the State of referral. In Croatia, the State Prosecutor will initiate proceedings against the accused before one of the four especially designated County Courts in Osijek, Rijeka, Split or Zagreb upon assignment by the President of the Supreme Court of the Republic of Croatia. In Serbia, trial proceedings in a referred case are presumed to take place before the Belgrade District Court.

d. Substantive law to be applied by referral State

While it is for the sovereign State to whose jurisdiction a case is referred to determine the applicable substantive law, the Referral Bench needs to satisfy itself that the domestic law would permit the prosecution, trial and—if applicable—appropriate punishment of the accused, and that the offences under domestic law are of the type charged before ICTY. While it is not required that the law of the State contain exactly the same criminal provisions as the ICTY Statute, it suffices that they are “substantially analogous”. Likewise, the Referral Bench has not considered as an impediment that the doctrine of superior responsibility (article 7, paragraph 3, of the ICTY Statute) does not have a counterpart in the 1977 Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY).

In situations where it is possible for more than one set of laws to be applied by the domestic court, the Referral Bench has considered each under the above considerations. In each case considered by the Referral Bench, the question has arisen as to whether the 1977 Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY) would apply—being the criminal law in force at the time when the crimes were committed—or a more newly enacted criminal code of one of the States of the former Yugoslavia, such as the Criminal Code of Bosnia and Herzegovina and Law on Amendments (2003) or the Criminal Act of Croatia (1997). The applicability of law may have an effect on the recognition of certain crimes or modes of liability, the statute of limitations and the maximum permissible sentence which may be adjudged. So far, the Referral Bench has not once suggested that any of the newly enacted criminal legislations, or the 1977 Criminal Code of the SFRY, fail to meet the required standard.

In the two referred cases adjudged to date by the BiH Court, the accused have been found guilty under provisions of the 2003 Criminal Code of Bosnia and Herzegovina, rather than the 1977 Criminal Code of the SFRY, although the crimes in question had been committed in 1992.

e. Non-imposition of death penalty

Rule 11 *bis* (B) requires that the Referral Bench be satisfied that the death penalty will not be imposed or carried out if a case is to be referred. Although the death penalty was provided for in the 1977 Criminal Code of the Socialist Federal Republic of Yugoslavia, such punishment would be in contravention of Protocol 13³⁴¹ to the European Convention on Human Rights (ECHR). Bosnia and Herzegovina, Croatia and Serbia, to which all cases have so far been referred, have ratified the European Convention on Human Rights and its protocols. The Referral Bench thus concluded in all cases before it that there was no reason to believe that States would choose to ignore their international obligations by imposing or executing the death penalty.

f. Fair trial at referral State

Rule 11 *bis* (B) requires that the Referral Bench be satisfied that the accused will receive a fair trial before the courts of the referral State. In determining what procedural guarantees are necessary for such an assessment, the Referral Bench consistently relies on provisions such as article 21 of the ICTY Statute, article 14 of the International Covenant on Civil and Political Rights, and article 6 of the ECHR, each as a compendium of fair trial rights. Thus, the Referral Bench has considered the following guarantees to form part, and be essential components of, the right to a fair trial:

- the equality of all persons before the court;
- a fair and public hearing by a competent, independent, and impartial tribunal established by law;
- the presumption of innocence until guilt is proven according to the law;
- the right of an accused to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- the right of an accused to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- the right of an accused to be tried without undue delay;
- the right of an accused to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing;
- the right of an accused to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
- the right of an accused to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- the right of an accused to have the free assistance of an interpreter if he cannot understand or speak the language used in the proceedings; and

³⁴¹ Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances.

- the right of an accused not to be compelled to testify against himself or to confess guilt.

g. Additional considerations for referral

Witness protection: The Referral Bench has considered the issue of witness protection in the referral State in assessing whether a case should be referred, even though the issue does not arise directly within the context of an accused's right to a fair trial. However, promoting witness presence at trial by providing measures for their protection may become relevant to the accused's fair trial right to obtain the attendance and examination of witnesses on his behalf under the same conditions as the witnesses who testify against him. The Referral Bench regularly reviews the domestic legislation of the referral State and may order protective measures granted in ICTY proceedings for certain witnesses or victims to remain in force.

Physical transfer: Within each decision to refer a case, the Referral Bench has included an order requiring the Registrar to arrange for the transport of the accused to the State of referral within 30 days of the decision becoming final. Where a referral request includes two or more accused, the Referral Bench may suspend its order concerning transfer of an accused who has waived appeal "until such time as the Decision has become final with regard to both Accused".

Monitoring of proceedings: Rule 11 *bis* (D) (iv) provides that the Prosecutor may send observers to monitor the proceedings before national courts on her behalf. This provision, along with rule 11 *bis* (F), which allows for a referral to be revoked and a case transferred back to ICTY, serve as remedies against a failure of the State to diligently prosecute a referred case or conduct a fair trial of the accused. The Referral Bench consistently held that referral of a case implies that the proceedings in relation to an accused become the primary responsibility of the authorities of the State of referral, including its investigative, prosecutorial, and judicial organs. However, the Appeals Chamber confirmed that the Referral Bench has the inherent authority to order the Prosecution to report back on the progress of a case referred to national authorities. At the time when the Referral Bench issued its first decision in Stanković, the Prosecutor was in negotiations with the Organisation for Security and Cooperation in Europe (OSCE) for the monitoring and reporting on trial proceedings in a referred case on her behalf. An agreement between her and OSCE was concluded subsequently. The Referral Bench has accepted that monitoring of the proceedings by OSCE, in view of the standing and neutrality of the organisation, provides an adequate monitoring mechanism to take care of any fair trial issues that might arise in the conduct of proceedings before a national court. In all referred cases, the Prosecution was ordered to report back periodically to the Referral Bench on the course of proceedings at a national level. In these reports, the Prosecution in turn relies on trial monitoring reports prepared by OSCE. The Appeals Chamber has confirmed the propriety of this monitoring mechanism.

Confidentiality and protective measures: The Referral Bench has consistently in its referral decisions included orders that the ICTY protective measures for victims and witnesses shall remain in force after referral, and that referral should not have the effect of revoking the previous orders and decisions in that case. Continuity of ICTY orders and decisions has ramifications for the conduct of national proceedings: the national court has

to seek leave from ICTY when a variation of measures protecting confidentiality becomes necessary or even inevitable, for instance when the national prosecutor decides to alter protective measures for a witness or when new counsel is assigned to the case. ICTY rule 75, which deals with protective measures for victims and witnesses, has recently been amended to give national courts standing to apply for a variation of protective measures granted during ICTY proceedings.

(ii) *Appeals Chamber case law*

In 2005, the Appeals Chamber of the Tribunal rendered over 120 appeals decisions, 70 orders and 5 appeal judgements (including 4 judgements on sentencing appeal). The Appeals Chamber notably touched upon the following issues: the sentencing practices at ICTY, joint criminal enterprise as a mode of responsibility, and the interpretation of articles 3 and 5 of the Statute.

a. Sentencing practices at ICTY in general

The year 2005 has indubitably been the year of judgements on sentencing appeals for the ICTY Appeals Chamber, shedding light on the plea agreement procedure and providing sentencing guidelines. The Appeals Chamber rendered the following judgements: *Prosecutor v. Dragan Nikolić*, Case No. IT-94-02-A, Judgement on Sentencing Appeal, 4 February 2005 (*Nikolić*); *Prosecutor v. Milan Babić*, Case No. IT-03-72-A, Sentencing Judgement, 18 July 2005 (*Babić*); *Prosecutor v. Miroslav Deronjić*, Case No. IT-02-61-A, Judgement on Sentencing Appeal, 20 July 2005 (*Deronjić*); and *Prosecutor v. Miodrag Jokić*, Case No. IT-01-42/1-A, Sentencing Judgement, 30 August 2005 (*Jokić*).³⁴²

b. Plea agreements

Upon transfer of an accused to ICTY, the case is assigned by the President to a Trial Chamber, and the accused is brought without delay before that Trial Chamber or a Judge thereof. The indictment is read out and the accused is called upon to enter a plea of guilty or not guilty. Once an accused has entered a plea of guilt, the Trial Chamber must ensure that his plea has been made voluntarily, is informed, is not equivocal, and that there is a sufficient factual basis for the crimes under consideration and the accused's involvement. When those conditions are met, there will be no trial, a sentencing hearing will take place, and a sentencing judgement will be issued. A person convicted following a plea of guilt will not be able to appeal his conviction, but only his sentence.

In most cases, a plea of guilt will be preceded by a plea agreement, in which the parties will agree on the facts underlying the charges to which the accused will plead guilty (*Babić*, paragraph 18). They will very often recommend a sentence. This recommendation, while not binding, will be given "due consideration" and Trial Chambers will have to issue a reasoned opinion under article 23, paragraph 2, of the Statute should they "substantially" depart from it (*Nikolić*, paragraph 89; *Babić*, paragraph 30).

³⁴² See also chapter VII D below.

c. Sentencing guidelines

Pursuant to article 24 of the Statute and rule 101 of the Rules, Trial Chambers must take into account the following factors in sentencing: the gravity of the offence or totality of the culpable conduct and the individual circumstances of the convicted person, the general practice regarding prison sentences in the courts of the former Yugoslavia, and aggravating and mitigating circumstances. Trial Chambers shall also take into account the following sentencing goals: deterrence and retribution (*Nikolić*, paragraphs 134–140).

While the Statute and the Rules oblige Trial Chambers to take into account the mitigating and aggravating circumstances of a case, those instruments do not mention which factors should be taken into account in mitigation or aggravation of a sentence, with the exception of substantial cooperation with the Prosecution (*Nikolić*, paragraph 66). It is for the parties to argue which further factors should in their view be taken into account. Aggravating circumstances must be proven beyond reasonable doubt, whereas mitigating circumstances must be proven on a “balance of probabilities”: the circumstance in question must have existed or exists “more probably than not” (*Babić*, paragraph 43). A Trial Chamber may decide, where the parties agree on some of the mitigating circumstances, to discharge the accused of that burden (*Jokić*, paragraph 47). The determination of what can constitute an aggravating or a mitigating factor and what weight has to be attached to it is within the Trial Chambers’ discretion and, accordingly, a Trial Chamber’s decision will only be disturbed on appeal if the appellant shows that the Trial Chamber either erred in the weighing process involved in the exercise of its discretion by taking into account what it ought not to have, or erred by failing to take into account what it ought to have. In so doing, the appellant is not allowed to challenge the Trial Chamber’s overall findings but must challenge the findings for each specific factor (*Babić*, footnote 215).

Various mitigating factors have been taken into account throughout the years. In *Babić* (paragraph 43), the Appeals Chamber recalled the law applicable to mitigating circumstances and drew a non-exhaustive list of such factors. Examples of mitigating circumstances are: co-operation with the Prosecution, admission of guilt or a guilty plea, expression of remorse, voluntary surrender, good character with no prior criminal convictions, comportment in detention, personal and family circumstances, post-conflict conduct (*Babić*, paragraphs 48–50 and 55; *Jokić*, paragraph 54), duress, indirect participation, diminished mental responsibility, age, assistance to detainees or victim, and poor health.

With regard to aggravating circumstances, in principle they must relate to the offender him- or herself. This does not mean that they must necessarily pertain to the offender’s personal characteristics, but rather that the accused can only be held responsible for acts for which he has done something or failed to do something that justifies holding him responsible (*Deronjić*, paragraph 124). The position of authority of an accused, coupled with the manner in which the authority is exercised (*Babić*, paragraphs 80–81), may for example be taken in aggravation of a sentence. Other examples are: the vulnerability and the defencelessness of the victims (*Deronjić*, paragraph 127) or the sadistic behaviour of an accused (*Nikolić*, paragraphs 27–28). An important consideration is that the same factors shall not be taken into account both as aspects of the gravity of the crimes and as aggravating factors (*Babić*, paragraphs 106–107).

There is no sentencing scale at ICTY and each sentence is tailored to fit the individual circumstances of the accused and the gravity of the crimes. Accordingly, the guid-

ance provided by previous sentences at ICTY is very limited, and comparison will be undertaken only when the offences are the same and committed in substantially similar circumstances (*Nikolić*, paragraph 19; *Babić*, paragraph 32). In determining the proper sentence, Trial Chambers must take into account the sentencing practices of the courts of the former Yugoslavia. They are not bound by such practices but, should they depart from the sentencing limits those courts set, must give reasons for such departure (*Nikolić*, paragraph 69). Because ICTY exercises a different jurisdiction from the national jurisdiction in which the crimes were committed, the principle of *lex mitior*, according to which a less severe law should be applied, does apply to changes in the laws of the former Yugoslavia (*Nikolić*, paragraphs 80–85).

Finally, once an accused has served two-thirds of the sentence imposed on him, he is eligible for early release upon a decision by the President of ICTY. However, Trial Chambers shall not attach too much weight to such practice when sentencing an accused, since such a decision remains only a possibility (*Nikolić*, paragraph 97).

d. “Joint criminal enterprise” as a mode of responsibility

On 28 February 2005, the Appeals Chamber rendered its judgement in the *Kvočka* case (*Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98–30/1-A, 28 February 2005 (*Kvočka*)). It affirmed that joint criminal enterprise is not a crime in itself but a form of commission under article 7, paragraph 1, of the Statute (*Kvočka*, paragraph 91), which requires a plurality of co-perpetrators who act pursuant to a common purpose involving the commission of a crime in the Statute (*Kvočka*, paragraph 81). When the Prosecution relies on a theory of joint criminal enterprise, the material facts of this mode of responsibility—such as the purpose of the enterprise, the identity of the participants, and the nature of the participation of the accused in the enterprise—must be clearly pleaded in the indictment (*Kvočka*, paragraph 42).

Three forms of joint criminal enterprise have been recognised in the jurisprudence of ICTY.³⁴³ At issue in *Kvočka* was the second form of joint criminal enterprise: the “systemic” form, characterised by the existence of an organised criminal system, in particular in the

³⁴³ Preliminarily, a joint criminal enterprise (JCE) requires that there be two or more persons, who share a common plan, design or purpose which amounted to or involved the commission of a crime otherwise encompassed in the Statute.

JCE I exists where all co-perpetrators share the intent to carry out the common criminal purpose. An accused who intends to perpetrate the crime, sharing the criminal intent of the co-perpetrator(s), can be held responsible for JCE I.

JCE II exists where there is an organized criminal system such as detention camps or centres. An accused who has personal knowledge of the system of ill-treatment, as well as the intent to further this common concerted illegal system can be held responsible for JCE II.

JCE III is an extended form of liability where an accused is liable for additional crimes that were carried out during the criminal enterprise where they are a natural and foreseeable consequence of some other act which is part of the criminal purpose. An accused who intends to participate in and further the criminal activity or purpose of the group and to contribute to the joint criminal enterprise or in any event related to the commission of a crime by the group can be held responsible for JCE III provided that the additional event, to the commission of which the accused did not necessarily agree personally, was a foreseeable event (i.e., in that it was foreseeable that this event might be committed by one or another member of the group), and that the accused willingly took that risk.

case of concentration / detention camps. This second form of joint criminal enterprise requires personal knowledge of the organised system and intent to further the system's common criminal purpose (*Kvočka*, paragraph 82).

As a general rule, there is no requirement for the contribution of the accused underlying his participation in a joint criminal enterprise to be substantial (*Kvočka*, paragraph 97), nor is his participation a *sine qua non* for the commission of the crime (*Kvočka*, paragraph 98). In practice, however, the significance of an accused's contribution will be relevant to demonstrate that he shared the intent to pursue the common purpose (*Kvočka*, paragraph 188). Moreover, in the case of an "opportunistic visitor" entering a detention camp, a substantial contribution to the overall effect of the camp is necessary to establish his responsibility under the joint criminal enterprise doctrine (*Kvočka*, paragraph 599). Whether an accused will be held responsible as an aider and abettor for assisting an individual crime committed by a single perpetrator, or as a co-perpetrator responsible for assisting in all the crimes committed by the plurality of persons involved in a joint criminal enterprise, will depend on the effect of the assistance and on the knowledge of the accused (*Kvočka*, paragraph 90).

There is no requirement of a formal agreement for the systemic form of joint criminal enterprise: once it has been established that the accused had knowledge of the system of discriminatory ill-treatment, it is a question of determining his involvement in that system, without it being necessary to establish that he had entered into an agreement with the principal perpetrators of the crimes committed under the system to commit those crimes (*Kvočka*, paragraph 209).

(iii) *Interpretation of articles 3 to 5 of the Statute by the Appeals Chamber*

a. **Jurisdiction over crimes listed in articles 3 (b), (d) and (e) of the Statute**

In its *Decision on Joint Defence Interlocutory Appeal of Trial Chamber Decision on Rule 98 bis Motions for Acquittal* rendered on 11 March 2005 in *Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case No. IT-01-47-AR73.3 (*Hadžihasanović Decision*), the Appeals Chamber specified that the prohibitions of "wanton destruction of cities, towns or villages not justified by military necessity" (article 3 (b)), "destruction or wilful damage done to institutions dedicated to religion" (article 3 (d)) and "plunder of public or private property" (article 3 (e)) are applicable both in situations of international and non-international armed conflicts, and that therefore no proof of occupied territory is required (*Hadžihasanović Decision*, paragraphs 29–30, 37 and 46). The violation of these rules entails, under customary international law, the individual criminal responsibility of the offender (*Hadžihasanović Decision*, paragraphs 30, 38 and 48).

b. **Murder under article 3 of the Statute**

For the crime of murder under article 3 of the Statute to be established, the Prosecutor bears the onus of proving: the death of a victim taking no active part in the hostilities; that the death was the result of an act or omission of the accused or of one or more persons for whom the accused is criminally responsible; and the intent of the accused or of the persons for whom he is criminally responsible (i) to kill the victim or (ii) to wilfully cause serious

bodily harm which the perpetrator should reasonably have known might lead to death (*Kvočka*, paragraph 261).

If the murder was committed as part of a joint criminal enterprise it is not necessary to establish the accused's (physical) participation in each murder (*Kvočka*, paragraphs 112 and 263). It is sufficient to prove (i) that the death of the victim was the result of implementing a joint criminal plan, i.e. of setting up a system of ill-treatment; and (ii) the responsibility of the accused in furthering that common criminal purpose. In the context of the detention camp established in Omarska, it had therefore to be proven that the death of the victim was the result of what happened in Omarska camp, be it inhumane conditions, beatings or ill-treatment (*Kvočka*, paragraph 262).

c. Harassment, humiliation and other psychological abuse amounting to persecution under article 5 of the Statute

Acts and omissions not specifically listed in the Statute can amount to the crime of persecution if they are of the same gravity as the crimes enumerated in article 5 of the Statute. In order to apply this standard of gravity, the acts or omissions in question must not be considered in isolation, but in context, by looking at their cumulative effect (*Kvočka*, paragraph 321). The Appeals Chamber applied this standard to the specific acts of harassment, humiliation and psychological abuse found to have been committed in the Omarska camp. While harassment, humiliation and psychological abuse are not as such listed under article 5 of the Statute, the acts in question, in the context of the "horrendous conditions of detention and the demoralizing treatment of detainees in Omarska camp", and taking into account their cumulative effect, were found to be acts which by their gravity constituted material elements of the crime of persecution (*Kvočka*, paragraphs 324–325).

B. GENERAL REVIEW OF THE LEGAL ACTIVITIES OF INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS

1. Universal Postal Union

On the 24 February 2005, the Universal Postal Union (UPU) signed an agreement between the United Nations Joint Staff Pension Board and UPU on the transfer of pension rights of participants in the United Nations Joint Staff Pension Fund and of participants in the Provident Scheme of UPU.

On 29 August 2005, UPU signed a memorandum of understanding between the United Nations Development Programme (UNDP) and UPU concerning the management of the Junior Professional Officer Programme for UPU. Junior Professional Officers are UNDP staff members, loaned to UPU. While on loan to UPU they will be subject to administrative supervision and technical guidance of UPU, but they will retain their contractual relationship with UNDP and, as UNDP staff members, will be subject to United Nations Staff Rules and Regulations (200-series).

A memorandum of understanding was signed on 8 November 2005 between the Union Network International (UNI) and UPU. UNI is a member of the newly created Consultative Committee of UPU. UNI and UPU wish to promote social dialogue within

the framework of their respective functions, in order to help achieve the objectives of the UPU Bucharest World Postal Strategy.³⁴⁴

A Cooperation Agreement between the Government of the Republic of South Africa and the International Telecommunication Union and UPU was signed on 18 November 2005. The parties agreed to collaborate in the implementation of a project to contribute to the expansion of the rural telecommunications information technology network and services of developing countries.

2. International Labour Organization

(a) Membership

Samoa became the 178th member of the International Labour Organization (ILO) and was admitted under article 1.3 of the ILO Constitution³⁴⁵ on 7 March 2005.

(b) Resolutions and recommendations adopted by the International Labour Conference during its 93rd session

At the 93rd session of the International Labour Conference, Geneva, the following resolutions were adopted:³⁴⁶

- (a) Resolution concerning youth employment;
 - (b) Resolution to place on the agenda of the next ordinary session of the Conference an item entitled “Occupational safety and health”;
 - (c) Resolution concerning the flag of the International Labour Organization;
 - (d) Resolution concerning the adoption of the Programme and Budget for 2006–2007 and the allocation of the budget of income among member States;
 - (e) Resolution concerning the arrears of contributions of the Republic of Moldova;
 - (f) Resolution concerning the arrears of contributions of Togo;
 - (g) Resolution concerning the arrears of contributions of Georgia;
 - (h) Resolution concerning the arrears of contributions of Iraq;
 - (i) Resolution concerning the assessment of contributions of new member States;
- and
- (j) Resolution concerning the composition of the Administrative Tribunal of the International Labour Organization.

³⁴⁴ UPU 23rd Congress, Bucharest, Romania, 2004, Congrès-Doc-46.

³⁴⁵ United Nations, *Treaty Series*, vol. 15, p. 40; *ibid.*, vol. 191, p. 143; and *ibid.*, vol. 958, p. 167.

³⁴⁶ CONFREP-93rd-2005-06-0019-1-En.doc.

(c) Report of the Tripartite Meeting of Experts for the development of the Joint ILO/World Health Organization (WHO) Guidelines³⁴⁷

The Tripartite Meeting of Experts to Develop Joint ILO/WHO Guidelines on Health Services and HIV/AIDS was held in Geneva from 19 to 21 April 2005, and was chaired by Dr. Lester Wright (United States).

The Meeting was attended by Government experts from Cameroon, Chile, Indonesia and the Russian Federation, as well as five Employer and five Worker experts. A Government representative from Morocco attended as an observer, as did a representative of the United Nations Office on Drugs and Crime. Representatives from the following international non-governmental organizations also attended as observers: International Confederation of Free Trade Unions; International Cooperative Alliance; International Council of Nurses; the International Organization of Employers; International Pharmaceutical Federation; Public Services International; World Confederation of Labour; and World Economic Forum-Global Health Initiative.

The agenda of the Meeting was to develop joint ILO/WHO guidelines on health services and HIV/AIDS. The Meeting considered draft guidelines jointly prepared by the International Labour Office and WHO and unanimously adopted the revised draft Joint ILO/WHO Guidelines on Health Services and HIV/AIDS³⁴⁸ and the report of the discussion.³⁴⁹

3. International Civil Aviation Organization

(a) Membership

On 4 August 2005, Timor-Leste deposited with the Government of the United States its notification of adherence to the Convention on International Civil Aviation (Chicago Convention).³⁵⁰ The adherence took effect on 3 September 2005, bringing the number of member States of the International Civil Aviation Organization (ICAO) to 189.

(b) Conventions and agreements

On 18 April 2005, the Protocol relating to an amendment to the Convention on International Civil Aviation [article 56],³⁵¹ signed at Montréal on 6 October 1989, entered into force, having been ratified by 108 States. This Protocol provides for the increase of the Air Navigation Commission from 15 to 19 members.

On 2 November, the conditions for the entry into force of the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft

³⁴⁷ GB.293/6.

³⁴⁸ TMEHS/2005/8.

³⁴⁹ TMEHS/2005/7.

³⁵⁰ United Nations, *Treaty Series*, vol. 15, p. 295. For the text of the Protocols amending this Convention, see vol. 320, pp. 209 and 217, vol. 418, p. 161, vol. 514, p. 209, vol. 740, p. 21, vol. 893, p. 117, vol. 958, p. 217, vol. 1008, p. 213, vol. 2122, p. 337, vol. 2133, p. 43, vol. 2216, p. 483 and vol. 2320, p. 79.

³⁵¹ ICAO Document 9544. United Nations, *Treaty Series*, vol. 2320, p. 79.

Equipment,³⁵² signed at Cape Town on 16 November 2001 (CAPE Town Protocol), were met. Thus, the Protocol and the Convention on International Interests in Mobile Equipment, signed at Cape Town on 16 November 2001³⁵³ (Cape Town Convention), as applied to aircraft equipment, will enter into force on 1 March 2006.

(c) Major legal developments

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

Pursuant to a decision of the 176th session of the Council of ICAO, the General Work Programme of the Legal Committee is as follows:

(a) 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 1952.³⁵⁴ The Special Group on the Modernization of the Rome Convention of 1952 held two meetings, the first from 10 to 14 January, and the second from 4 to 8 July 2005. The Group continued to refine the text of the Draft Convention on Damage Caused by Foreign Aircraft to Third Parties, and commenced consideration of a Supplementary Compensation Mechanism to cover payments to victims beyond the amounts which may be available through insurance to the airlines and possibly certain other aviation entities. On 14 November, the Council decided to convene a third meeting of the Group from 13 to 17 February 2006.³⁵⁵

(b) Acts or offences of concern to the international aviation community and not covered by existing air law instruments. The legal measures to cover the new and emerging threats to civil aviation security were considered under this item. After a survey conducted through a questionnaire circulated on 24 March 2005 under cover of State letter,³⁵⁶ the Council, during its 176th session, decided to establish a Secretariat Study Group to further study this matter. Furthermore, the Secretariat maintained a close relationship with its United Nations counterpart in this field.

(c) Consideration, with regard to navigation and surveillance/air traffic management (CNS/ATM) systems, including global navigation satellite systems (GNSS), of the establishment of a legal framework. Pursuant to resolution A35-3, the Secretariat monitored and, when requested, assisted in the development of regional initiatives. In particular, it participated, in September, in a meeting in the South American (SAM) region, during which the possibility of establishing regional structures was considered.

(d) International interests in mobile equipment (aircraft equipment). The Preparatory Commission for the International Registry held its third meeting at ICAO Headquarters in Montréal from 17 to 18 January 2005, during which it approved the Regulations for the International Registry, the user-fee schedule and the Contract with the Registrar, and defined the amount of insurance to be procured by the Registrar. In October, the Preparatory Commission approved the Procedures for the International Registry through a written procedure. The Council decided, in June, to confirm its acceptance of the functions of

³⁵² ICAO Document 9794.

³⁵³ ICAO Document 9793.

³⁵⁴ ICAO Document 7364. United Nations, *Treaty Series*, vol. 310, p. 181.

³⁵⁵ See the annual report of the Council, doc. 9862.

³⁵⁶ LE 4/65-05/45.

Supervisory Authority of the International Registry upon the entry into force of the Cape Town Convention and Protocol, to which it had been invited by the Cape Town Diplomatic Conference. Taking into account that Malaysia had deposited, on 2 November 2005, its instrument of accession to the Cape Town Convention and Protocol and that, as a result thereof, these instruments would enter into force on 1 March 2006, the Council decided later in November to initiate the process of establishing a commission of experts to assist in the performance of the functions of Supervisory Authority by the Council, in accordance with article XVII of the Protocol and resolution No. 2 of the Cape Town Diplomatic Conference. The Final Acceptance Tests of the International Registry were conducted successfully in October and the corresponding Final Acceptance Certificate was issued in November, thus concluding the establishment phase of the Registry and declaring it ready to enter into operation when the Cape Town Convention and Protocol enter into force, as required under these instruments.

(e) Review of the question of the ratification of international air law instruments. The Secretariat continued to take administrative action necessary to encourage ratification, such as the development and dissemination of ratification packages, promotion of ratification at various fora and continued emphasis on ratification matters by the President of the Council and the Secretary General during their visits to States. To assist States in their ratification of these treaties, administrative packages have been updated and are being posted on the ICAO-NET.

(f) United Nations Convention on the Law of the Sea—Implications, if any, for the application of the Chicago Convention of 1944, its annexes and other international air law instruments. The Secretariat pursued its monitoring activities in this area.

(ii) *Council Special Group on Legal Aspects of Emissions Charges*

In June 2005, the Council agreed to establish the Council Special Group on Legal Aspects of Emissions Charges (CSG-LAEC) which met in Montréal in September. The Special Group conducted its analysis on the basis of a list of legal questions addressing emissions charges at the local level, as well as at the global level, that was prepared by the Committee on Aviation Environmental Protection (CAEP) Emissions Charges Task Force at a meeting convened in April. The Special Group agreed on key conclusions³⁵⁷ which reflected two significantly different approaches, in particular regarding the interpretation of article 15 of the Chicago Convention. This was noted by the Council (176/1) which further agreed that the outcome of the CSG-LAEC meeting be considered by the CAEP Steering Group in October.

(iii) *Assistance in the field of aviation war risk insurance*

Globaltime, an ICAO proposal for a global scheme intended to provide non-cancellable, third-party aviation war risk coverage through a non-profit insurance entity with multilateral backing of Governments for the initial years, is a short and medium term contingency scheme.³⁵⁸ By the end of the year, Contracting States representing 46.19 per cent of annual

³⁵⁷ C-WP/12530, attachment A.

³⁵⁸ Resolution A33-20.

contribution rates indicated their intention to participate in Globaltime, among which 34.19 per cent under certain conditions.³⁵⁹ Therefore, the 51 per cent threshold of intentions to participate has so far not been reached and the ICAO global scheme is held in contingency mode.³⁶⁰ The Secretariat continued monitoring developments in this respect.

4. Food and Agriculture Organization of the United Nations

(a) Constitutional and general legal matters

(i) *Membership*

The Food and Agriculture Organization of the United Nations (FAO) Conference, at its thirty-third session, admitted Belarus to membership in the Organization.³⁶¹

(ii) *Amendment to the Agreement for the Establishment of a Commission for Controlling the Desert Locust in the Central Region*

The FAO Council approved at its hundred and twenty-eighth session³⁶² an amendment to article IX of the Agreement for the Establishment of a Commission for Controlling the Desert Locust in the Central Region as proposed by that Commission. The Commission had proposed that article IX of the Agreement be amended so that the number of the members or the Executive Committee of the Commission be increased to 7 as it would allow greater efficiency in carrying out the Commission's functions.

(iii) *Agreement between the Food and Agriculture Organization of the United Nations (FAO) and the World Intellectual Property Organization (WIPO)*

The FAO Conference, at its thirty-third session, confirmed the Agreement between the Food and Agriculture Organization of the United Nations (FAO) and the World Intellectual Property Organization (WIPO), which had been approved by the Council at its hundred and twenty-ninth session³⁶³ in November 2005.

(iv) *Amendments to the Statutes of the Codex Alimentarius Commission*

At its twenty-eighth session, held in Rome in July 2005, the Codex Alimentarius Commission agreed to recommend to the FAO Conference and to the World Health Assembly that article 1 of its Statutes be revised in order to abolish the acceptance procedure by

³⁵⁹ Resolution A35-24.

³⁶⁰ State letter LE 4/64-03/65 of 30 June 2003.

³⁶¹ For the report of FAO Conference's thirty-third session (Rome, 19-26 November 2005), see C 2005/REP.

³⁶² For the report of FAO Council's hundred and twenty-eighth session (Rome, 20-24 June 2005), see CL 128/REP.

³⁶³ For the report of FAO Council's hundred and twenty-ninth session (Rome, 16-18 November 2005), see CL 129/REP.

which food standards adopted by the Commission were voluntary, subject to acceptance by Governments.

The FAO Conference approved at its thirty-third session the amendments to the Statutes of the Codex Alimentarius Commission after the FAO Council, at its hundred and twenty-ninth session in November 2005, had endorsed the amendments proposed by the Codex Alimentarius Commission.

(v) *Security expenditure facility—Amendments to financial regulations*

The FAO Conference adopted by resolution 5/2005 the proposed amendments to financial regulation VI of the Financial Regulation of the Organization by which a security expenditure facility, consisting of a separate budgetary chapter of the Programme of Work and Budget and a security account, was established.

(vi) *Restriction of attendance by the “general public” to meetings*

In line with an old tradition of the United Nations system, the meetings of the main governing bodies of the FAO and the technical committees of open membership are held in public, subject to some limited exceptions regarding committees of restricted membership. However, security concerns have acquired an important dimension and these concerns have placed upon the Director-General responsibilities for security within the Organization, which he discharges in cooperation with the authorities of the host country.

The FAO Conference at its thirty-third session amended the General Rules of the Organization in order to allow the Director-General to take into account all relevant security concerns when making arrangements for the admission of the public to plenary meetings of the Conference and Council, while taking into account the traditional practice of the United Nations.

The principle that plenary meetings of the Conference and Council are public continues to be clearly stated in the General Rules of the Organization and the regime of access by representatives of the press and other information agencies remains unchanged.

(b) Legislative matters

(i) *Activities connected with international meetings*

- Thimun Model United Nations (The Hague, January 2005);
- Workshop on Safety Assessment of Food Derived from Modern Technology (Riyadh, 7–9 February 2005);
- Annual Meeting of the Legal Advisers of the United Nations system (London, 3–4 March 2005);
- COFI, Committee on Fisheries (FAO, Rome, March 2005);
- Subcommittee on Flag States Implementation, (International Maritime Organization, London, March 2005);

- International Workshop on Groundwater Management in Arid and Semi-arid Countries (Cairo, 4–6 April 2005);
- IBSA Right to Food Monitoring Project (Mannheim, 18–19 April 2005);
- Presentation “Le droit à l’eau comme droit de l’homme” (Scuola Superiore di Sant’Anna, Pisa, April 2005);
- Second Workshop on the Impact of Biotechnology on Human Rights organized by the Law Department of the European University Institute (Florence, June 2005);
- Workshop on Policies Against Hunger: Implementing the Voluntary Guidelines (Berlin, 14–16 June 2005);
- Ad Hoc Consultation on Strengthening Flag State Implementation (London, 7–8 July 2005);
- Global Fisheries Enforcement Training Workshop (Kuala Lumpur, 13–23 July 2005);
- APFIC Regional Workshop on Mainstreaming Co-Management in Asia Pacific (Siem Reap Cambodia, 9–12 August 2005);
- Expert Meeting on The Right to Water, World Water Council (Paris, October 2005);
- ECOST Workshop on Development of an assessment method of the societal cost for best fishing practices and efficient public policies (Rome, November 2005);
- Options and strategies for the conservation for farm animal genetic resources, convened by the System-wide Genetic Resources Programme of the CGIAR, FAO and AGROPOLIS (Montpellier, 7–10 November 2005);
- CITES Workshop on Introduction from the Seas (Geneva, 30 November-2 December 2005);
- Primo Congresso Europeo di Diritto Alimentare (Italian Association of Food Law, Rovigo, 8 December 2005); and
- UNITAR Training Course on International and National Water Law (Dushanbe, 10–17 December 2005).

(ii) *Legislative assistance and advice*

During 2005, legislative assistance and advice were given to the following countries and entities on the following topics:

Agrarian legislation

China, Ghana, Madagascar, Mozambique, Nigeria, Sierra Leone and Sudan.

Water legislation

Ghana, Kyrgyzstan, Lebanon and Malta. In addition, legal assistance was provided through a regional project for the Nile Basin countries (Burundi, Democratic Republic of the Congo, Egypt, Eritrea, Ethiopia, Kenya, Rwanda, Sudan, Tanzania and Uganda) and through a regional project for the Iullemeden Aquifer System (Mali, Niger and Nigeria).

Veterinary legislation

Albania, Belize, Benin, Burkina Faso, Côte d'Ivoire, Guinea Bissau, Jordan, Lithuania, Mali, Niger, Senegal and Togo.

Plant protection legislation, including pesticides control

Benin, Botswana, Burkina Faso, Cambodia, Côte d'Ivoire, Eritrea, Guinea Bissau, Iran (Islamic Republic of), Lao People's Democratic Republic, Mali, Mozambique, Myanmar, Namibia, Niger, Senegal, Swaziland, Syrian Arab Republic, Togo, Trinidad and Tobago, Uganda, Viet Nam, Yemen and Zambia.

Seed legislation and plant variety protection

Afghanistan, Angola, Burkina Faso, Democratic Republic of the Congo and Uzbekistan.

Food legislation

Albania, Benin, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Cambodia, Cook Islands, Côte d'Ivoire, Croatia, Democratic Republic of the Congo, Fiji, Gabon, Gambia, Guatemala, Guinea, Guinea Bissau, Kiribati, Macedonia, Mali, Marshall Islands, Moldova, Nauru, Niger, Nigeria, Niue, Palau, Papua New Guinea, Romania, Samoa, Senegal, Serbia, Solomon Islands, Syrian Arab Republic, Tanzania, Togo, Tonga, Vanuatu and Kosovo.

Fisheries and aquaculture legislation

Brazil, Cameroon, Chad, Chile, Colombia, Costa Rica, Cuba, Federated States of Micronesia, Georgia, Guatemala, Indonesia, Iran (Islamic Republic of), Jamaica, Kiribati, Marshall Islands, Mexico, Nauru, Nigeria, Palau, Philippines, Trinidad and Tobago, Venezuela, Viet Nam and SEAFDEC (Southeast Asian Fisheries Development Centre).

Forestry and wildlife legislation

Angola, Antigua and Barbuda, Argentina, Armenia, Bahamas, Barbados, Belize, Bolivia, Brazil, Bulgaria, Cameroon, Central African Republic, Chile, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Democratic Republic of the Congo, Timor-Leste, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Gabon, Grenada, Guatemala, Guinea, Guyana, Haiti, Honduras, Jamaica, Kazakhstan, Kenya, Kyrgyzstan, Liberia, Mauritius, Mexico, Mongolia, Mozambique, Nicaragua, Panama, Papua New Guinea, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Serbia, Saint Vincent and the Grenadines, Sudan, Suriname, Trinidad and Tobago, Uruguay, Venezuela and Kosovo.

Biodiversity and genetic resources legislation

Armenia, Bolivia, Guinea, Madagascar, Sri Lanka and Uzbekistan.

Biotechnology legislation

Bolivia, Grenada, Paraguay and Swaziland.

General agricultural issues (trade, markets and economic reform)

Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Colombia, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Georgia, Ghana, Guinea, Guinea Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome

and Principe, Senegal, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

(iii) *Legislative research and publications*

In 2005, the following legislative studies were published by the FAO Legal Office:

- *The legal framework for the management of animal genetic resources;*
- *Legal and institutional aspects of urban and peri-urban forestry and greening;*
- *Perspectives and guidelines on food legislation, with a new model food law; and*
- *Groundwater in international law—Compilation of treaties and other legal instruments.*

The FAO Legal Office also published the following legal papers online in 2005:

- *El papel de la legislación forestal y ambiental en países de América Latina para la conservación y gestión de los recursos naturales renovables;*
- *Legal and institutional aspects of urban, peri-urban forestry and greening: A working paper for discussion;*
- *Tendances du droit forestier en Afrique Francophone, Hispanophone et Lusophone;*
- *Improving the legal framework for participatory forestry: Issues and options for Mongolia with reference to international trends;*
- *The interface between customary and statutory water rights—A statutory perspective;*
- *Funding options for agricultural development: The case for special purpose levies;*
- *Effectivité de la protection de la biodiversité forestière en République Démocratique du Congo: Cas du Parc National des Virunga (PNVI); and*
- *Étude comparative de la mise en oeuvre des plans fonciers ruraux en Afrique de l'ouest: Benin, Burkina Faso, Côte d'Ivoire.*

(iv) *Collection, translation and dissemination of legislative information*

The FAO Legal Office maintains a database (FAOLEX) of national legislation and international agreements concerning food and agriculture (including fisheries, forestry and water). FAOLEX is designed to provide online access to the full texts of food and agriculture legislation worldwide and offers access to legislation, regulations and international agreements in sixteen different areas related to the fields of expertise of FAO. It is a comprehensive research tool that can be used to identify the state of national laws on natural resource management and, at the same time, compare legislation in different countries. FAOLEX provides a trilingual (English, French and Spanish) keyword and category search. Records are provided in English, French or Spanish according to the language of communication used by the originating country.

In 2005, 6,500 records were entered into FAOLEX.

Together with FAOLEX, FISHLEX (coastal State requirements for foreign fishing) and WATERLEX (international agreements on international water sources) databases were also updated in 2005. With regard to ECOLEX (information service on environmental law,

operated jointly by FAO, the International Union for Conservation of Nature (IUCN) and the United Nations Environment Programme (UNEP)), the bases of the new portal have been designed and work on cross-searches, including various databases (FAO, IUCN and UNEP), has been started.

5. United Nations Educational, Scientific and Cultural Organization

(a) Constitutional and procedural questions

Membership

Brunei Darussalam became a member State of the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 17 March 2005.

(b) International regulations³⁶⁴

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

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

(ii) *Instruments adopted by the General Conference of UNESCO at its 33rd session*³⁶⁵

a. Conventions and agreements

During its 33rd session, the General Conference adopted the International Convention against Doping in Sport on 19 October 2005,³⁶⁶ and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, on 20 October 2005.³⁶⁷

b. Declarations

The Universal Declaration on Bioethics and Human Rights was adopted by the General Conference at its 33rd session on 19 October 2005.³⁶⁸

³⁶⁴ The text of all UNESCO standard-setting instruments, as well as the list of States parties to the conventions and agreements, can be found on the website of UNESCO at <http://www.unesco.org/legal/instruments>.

³⁶⁵ See *Records of the General Conference, 33rd session—Resolutions, vol I* (Paris, 3–21 October 2005).

³⁶⁶ 33 C/Resolution 14. For the text of the Convention, see also section 1 of chapter IV B below, “Treaties concerning international law concluded under the auspices of intergovernmental organizations related to the United Nations”.

³⁶⁷ 33 C/Resolution 41. For the text of the Convention, see also section 2 of chapter IV B below, “Treaties concerning international law concluded under the auspices of intergovernmental organizations related to the United Nations”.

³⁶⁸ 33 C/Resolution 36.

(iii) *Proposal concerning the preparation of new instruments***Culture**

Having taken note of Recommendation No. 4 adopted by the thirteenth session of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (Paris, 7–10 February 2005) on the draft principles relating to cultural objects displaced in relation to the Second World War, the General Conference decided that the subject of cultural objects displaced in connection with the Second World War should be the subject of a standard-setting instrument, and that the form of this instrument should be a non-binding “Declaration of Principles”. The General Conference invited the Director-General to submit to it at its next session a draft of the declaration of principles relating to cultural objects displaced in connection with the Second World War after having convened an intergovernmental meeting to elaborate such a draft.³⁶⁹

(c) Human rights*Examination of cases and questions concerning the exercise of human rights coming within the fields of competence of UNESCO*

The Committee on Conventions and Recommendations met in private sessions at UNESCO Headquarters from 12 to 15 April 2005 and from 14 to 16 September 2005, in order to examine communications which had been transmitted to it in accordance with decision 104 EX/3.3 of the Executive Board.³⁷⁰

At its April 2005 session, the Committee examined 30 communications of which 6 were examined with a view to determining their admissibility or otherwise, 16 as to their substance, and 8 were examined for the first time. Three communications were struck from the list because they were considered as having been settled. The examination of the 27 was deferred. The Committee presented its report to the Executive Board at its 171st session.³⁷¹

At its September 2005 session, the Committee examined 27 communications of which 5 were examined with a view to determining their admissibility, 22 as to their substance, and no new communications were submitted to the Committee. Two communications were struck from the list because they were considered as having been settled. The examination of the 25 was deferred. The Committee presented its report to the Executive Board at its 172nd session.³⁷²

³⁶⁹ 33 C/Resolution 45.

³⁷⁰ Decision 104 EX/3.3 relates to the study of the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective. For the text of decision 104 EX/3.3, see 104/EX/Decisions.

³⁷¹ For the Committee’s report, see doc. 171 EX/61.

³⁷² For the Committee’s report, see doc. 172 EX/58.

(d) Copyright activities³⁷³

In 2005, the activities of UNESCO in the field of copyright and related rights focused mainly on the following.

(i) *Information and public awareness activities*

(a) E-copyright bulletin. Online publication of UNESCO *Copyright Bulletin* in six languages—Arabic, Chinese, English, French, Russian and Spanish—as a free-of-charge electronic legal journal. The *Copyright Bulletin* contains doctrinal articles, information on national laws (new laws, revisions, updating), and information about the activities of UNESCO in the field (meeting reports, summaries of undertaken actions, etc.), participation of States in various conventions and new specialised books recently published in the world.

(b) Publication of *Persistence of Piracy: The Consequences for Creativity, Cultural Industries and Sustainable Development* by Darrell Panethiere. The study defines and analyses the piracy phenomenon as well as its negative economic impact on the different cultural industries—music, book publishing, film and broadcasting. It focuses as well on the detrimental effect to culture, creativity, the loss of job opportunities and the negative impact on society in general. The publication is intended for Government policy makers, law enforcement officials and stakeholders from the civil society.

(c) Collection of national copyrights laws. This unique tool, essential for professionals, students and researchers, endeavours to provide access to legal texts. It comprises more than 100 national copyright and related rights legislations of UNESCO member States. In 2005, in addition to the regular update of information, the concept of the collection and its layout were revised.

(ii) *Training and teaching activities*

Teaching of copyright law has been pursued by the existing network of UNESCO Copyright Chairs. UNESCO has contributed to the reinforcement of some Chairs, and to the development of national expertise in the field of copyright, by supplying the Chairs with pedagogical material in the field of copyright or supporting them in publishing their own publication. A new Copyright Chair has been created in Cameroon.

In collaboration with Centro Regional para el Fomento del Libro en America Latina y el Caribe, UNESCO organized a meeting of the University Twinning and Networking, UNITWIN/UNESCO Ibero-American network for university teaching of copyright and neighbouring rights (RAMLEDA), which provided an opportunity for the network members to study the ways and means of strengthening the transfer of specialised and general knowledge in this field, with particular emphasis on distance learning.

In addition, copyright training seminars were organised in different parts of the world.

³⁷³ For more information on copyright activities, see <http://www.unesco.org/culture/copyright>.

(iii) *Administration of the Universal Copyright Convention³⁷⁴ and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention)³⁷⁵*

The 13th session of the Intergovernmental Copyright Committee, established under the Universal Copyright Convention, for which UNESCO provides secretariat functions, and the 19th session of the Intergovernmental Committee of the Rome Convention (ICR), for which the secretariat functions are provided jointly by UNESCO, the World Intellectual Property Organization and the International Labour Organization, took place in June 2005 at UNESCO Headquarters. The following studies were presented to the Intergovernmental Copyright Committee: “*Certain legal problems related to the making available of literary and artistic works and other protected subject matter through digital networks*”; “*Applicable law in cross-border cases of copyright infringement in the digital environment*”; and “*Report on piracy: current trends and rates and consequences for creativity and sustainable development*”. The ICR debated, among others things, issues related to the necessity of developing a new international instrument to protect the rights of broadcasters.

(iv) *Enforcement and management of rights*

a. **Prevention of piracy through training**

Further to the Anti-Piracy Training for Trainers project, launched in 2004, UNESCO organised a series of national follow-up anti-piracy seminars for copyright law enforcement officials in the countries of South-Eastern Europe. Anti-piracy seminars were also organised in Africa. The objective of these events was to provide knowledge and expertise in the field of copyright law and intellectual piracy to large circles of national enforcement officers involved in anti-piracy activities—law-makers, Government, police, customs, magistrates, etc.

b. **Prevention of piracy through public awareness-raising and information**

A significant awareness-raising campaign for the general public was launched through the display of posters throughout the Bogotá public transport network in Colombia. Mafalda, a popular cartoon character, has been used to convey a message that promotes the civic value of respect for copyright with the support of cartoonist Quino.

6. International Maritime Organization

(a) Membership

Timor-Leste and Zimbabwe became members of the International Maritime Organization (IMO) in 2005. As of 31 December 2005, the membership of the Organization stood at 166.

³⁷⁴ United Nations, *Treaty Series*, vol. 216, p. 132.

³⁷⁵ United Nations, *Treaty Series*, vol. 496, p. 43.

(b) Review of legal activities

The Legal Committee (the Committee) met only once in 2005 due to the Diplomatic Conference on the Review of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 1988 and its Protocol of 1988 relating to fixed platforms located on the continental shelf, which was held in October 2005. The Committee held its ninetieth session from 18 to 29 April 2005.³⁷⁶

(i) *Review of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988,³⁷⁷ and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988³⁷⁸ (SUA Convention and Protocol)*

The Committee concluded its consideration of draft protocols to the SUA Convention and Protocol. As the basis for discussion, it considered revised draft texts reflecting the outcome of the deliberations of the Legal Committee Working Group on the review of the SUA Convention and Protocol, which took place during the eighty-ninth session of the Committee and at the Working Group's second intersessional meeting, held from 31 January to 4 February 2005.

The Committee embarked on an article-by-article discussion of the texts, in the course of which it extensively discussed the Preamble, the new offences and the boarding provisions of the draft protocol to the SUA Convention. The Committee decided to include in the Preamble references, *inter alia*, to United Nations Security Council resolution 1540 (2004), which recognizes the urgent need for all States to take additional effective measures to prevent the proliferation of nuclear, chemical or biological (BCN) weapons and their means of delivery; and to General Assembly resolution 59/24 of 14 November 2004, urging States to become party to the SUA treaties and to participate in the review of those instruments by the Legal Committee, as well as a reference to the importance of the United Nations Convention on the Law of the Sea, 1982³⁷⁹ and customary law of the sea.

The Committee approved, by majority, the inclusion of a dual use offence, namely, the transport of "any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it will be used for such purpose." In this connection, it rejected a proposal to include in the provision a specific reference to national control lists or a terrorist motive.

The Committee agreed, by majority, to the inclusion, as an offence, of the transport on board a ship of "any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to a comprehensive safeguards agreement." Some delegations expressed dissatisfaction with this decision on the basis that these issues should be decided by consensus rather than majority and that including

³⁷⁶ The report of the Legal Committee is contained in document LEG 90/15.

³⁷⁷ *United Nations, Treaty Series*, vol. 1678, p. 201.

³⁷⁸ *Ibid.*

³⁷⁹ *United Nations, Treaty Series*, vol. 1833, p. 3.

the safeguard requirement would have the effect of imposing the Non-Proliferation Treaty (NPT) regime on non-NPT States, or would go beyond the NPT regime.

The Committee approved, by majority, a compromise proposal by the Chairman of the Committee setting out certain exceptions to the transport offences in draft article 3 *bis* 1 (b) (iii) and (iv). Some delegations objected to this decision and expressly reserved the right to raise the subject again at the Diplomatic Conference, while other delegations reserved their position on the grounds that they were unable to get instructions from their capitals.

The Committee approved the text of draft article 8 *bis*, setting out conditions for the boarding of ships on the high seas in situations where there are reasonable grounds to suspect that the ship or a person on board the ship is, has been or is about to be involved in the commission of an offence under the protocol. A proposal regulating the consequences of non-reply to a request for boarding was retained in square brackets.

The Committee approved the inclusion of a reference in draft article 11 *ter* to prosecution and punishment on account of a person's gender among the reasons to justify denial of a request for extradition or mutual legal assistance. It also amended some of the definitions in draft article 1 and agreed on the definition of "transports", as well as the substitution of "BCN weapon" for "prohibited weapon".

The Committee also completed its review of the final clauses. In this regard, it did not approve a proposal to include a tonnage requirement as a condition for entry into force of the protocol on the grounds, *inter alia*, that such an inclusion in a treaty of this nature, not being an IMO technical convention, was both inappropriate and unprecedented and that neither the original treaty nor other counter-terrorism conventions included a tonnage factor.

After discussing the possibility of States making reservations to the protocol, the Committee agreed that there was no need to develop a specific reservation provision for inclusion in the draft text.

The Committee approved the list of conventions in the annex to the protocol (article 7) as well as the annex amendment procedure (article 20).

Subject to the amendments agreed to at the session under review, the Committee approved, for submission to a diplomatic conference in October 2005, the texts of a draft protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 and of a draft protocol to the Protocol for the Suppression of Unlawful acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988.³⁸⁰ In so doing, the Committee noted several calls for delegations to pursue negotiations before and during the diplomatic conference in order to achieve consensus in connection with the few issues where differences of opinion still prevailed.

³⁸⁰ The Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf were adopted on 14 October 2005 by the Diplomatic Conference on the Revision of the SUA Treaties (LEG/CONF.15/21 and LEG/CONF.15/22, respectively).

(ii) *Draft wreck removal convention*

The Committee continued its consideration of a draft convention on wreck removal (DWRC), using, as a basis for discussion, a revised draft which incorporated amendments agreed to by the Committee at its previous session, amendments discussed and agreed to by the Ad Hoc Working Group, drafting proposals suggested by the Secretariat and proposals developed intersessionally following the eighty-ninth session. In so doing, it noted the information provided by the Secretariat concerning the expression of encouragement by the Contracting parties to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, at their twenty-sixth Consultative Meeting (1 to 5 November 2004), to make every effort to conclude the negotiations on the DWRC as soon as possible.

The Committee discussed the DWRC on an article-by-article basis, with the aim of reaching consensus on as many outstanding issues as possible, in order to present the “cleanest” possible text for consideration at a diplomatic conference, tentatively scheduled to be held in the forthcoming biennium, as well as to ascertain whether the text was ready for consideration at such a conference.

The Committee considered several new proposals and made a number of changes to the draft text. It agreed that the draft convention required further consideration in the light of the comments and proposals made at the session. Interested delegations were encouraged to continue working intersessionally under the leadership of the delegation of the Netherlands to further refine the text and to submit documents to the ninety-first session.

(iii) *Provision of financial security*

Progress report on 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

The Committee noted the progress made by the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers (the Joint Working Group) as well as supplementary information provided by the representative of ILO on the development by ILO of a joint database on incidents of abandonment of seafarers, the aim of which was to facilitate monitoring of the problem of abandonment in a comprehensive and informative manner.

The Committee noted the contents of a letter from the Chairman of the Joint Working Group, expressing the view that the database appeared to meet the requirements of the Group and that, when the Group next met, it should include on its agenda the question of how to deal with resolved cases.

The Committee also noted the concerns expressed by the representative of the International Shipping Federation (ISF) that, although a significant proportion of the cases cited in the database in its testing phase had been resolved, their entries remained on it and that some of the cases seemed to be related to fishing vessels, which were not within the remit of the Joint Working Group. ISF also questioned the compelling need to convene the Joint Working Group this year.

The Committee noted that, pending agreement by the Social Partners, the database would not be open to the public prior to the next meeting of the Joint Working Group and that, although ILO was not able to control the accuracy of the information, the provider had no interest in submitting incorrect information since the data was subject to verification by the port State, the flag State, the International Transport Federation and ISF.

The Committee confirmed the holding of the sixth session of the Joint Working Group from 19 to 21 September 2005.

(iv) *Follow-up on resolutions adopted by the International Conference on the Revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974*³⁸¹

a. Bareboat chartered vessels

The Committee noted information submitted by the Comité Maritime International (CMI) to the effect that the rights of passengers of a ship being bareboat chartered under the 1974 Athens Convention and its 2002 Protocol³⁸² would be protected, through checking by flag and port States, of the existence for each ship of insurance or other financial security. In the light of this information, the Committee decided that no further action was needed to comply with the request contained in the resolution adopted at the 2002 Diplomatic Conference.³⁸³

**b. Correspondence Group on the Athens Convention 2002:
draft Assembly resolution**

The Committee noted that intersessional discussions had taken place on the issue of the lack of available insurance cover, which is required for acts of terrorism under the 2002 Athens Protocol. It also noted a submission by the International Group of P&I Associations (P&I Clubs) and the International Union of Marine Insurance that an IMO Assembly resolution be developed recommending that States parties agree to interpret an “act of war” in article 3 (1) (a) as including an “act of terrorism”, the effect of which would be to exclude liability for terrorist acts from the cover provided by the P & I Clubs and other liability underwriters.

The Committee ultimately approved a draft Assembly resolution for submission to the twenty-fourth session of the Assembly for adoption. The draft resolution aimed at resolving the problem by recommending that, when States ratify the Athens Protocol, “they reserve the right to issue and accept insurance certificates with such special exceptions and limitations as the insurance market conditions at the time of issue of the certificate necessitate, such as the bio-chemical clause and terrorism related clauses.” The resolution was adopted by the Assembly at its twenty-fourth session in December 2005.³⁸⁴

³⁸¹ United Nations, *Treaty Series*, vol. 1463, p. 19.

³⁸² The Protocol of 2002 to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, adopted on 1 November 2002. LEG/CONF 13/20 of 19 November 2002.

³⁸³ The International Conference on the Revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974.

³⁸⁴ Resolution A.988(24).

The Committee recognized that further work would be needed to develop the guidance called for in the draft resolution as well as to address other outstanding issues relating to the 2002 Athens Protocol, including liability issues.

(v) *Fair treatment of seafarers: report on the first session of the joint IMO/ILO ad hoc expert working group on fair treatment of seafarers*

The Committee took note of the report of the first session of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers (the Group), which had met from 17 to 19 January 2005.

The Committee noted that, although some international agreements highlighted problems related to the question of fair treatment of seafarers, none of them addressed the issue in a comprehensive way. Guidelines on fair treatment of seafarers were, therefore, required but there had been insufficient time for the Group to complete their development.

The Committee agreed that there was an urgent need to prepare guidelines and have them implemented as soon as possible. To this end, it approved a draft Assembly resolution for submission to the twenty-fourth session of the Assembly for adoption.³⁸⁵ The draft resolution had been prepared by the Group and, *inter alia*, called for the adoption of guidelines as a matter of urgency. The resolution was adopted by the Assembly at its twenty-fourth session in December 2005.³⁸⁶

The Committee approved the continuation of the Group's deliberations as well as the establishment of a correspondence group to assist its progress during the intersessional period.

The Committee discussed whether the terms of reference of the Group should be expanded to include, *inter alia*, "incidents". Taking into account, however, the fact that any amendments would have to be agreed upon by the Governing Body of ILO, thus delaying the preparation of the urgently needed guidelines, it agreed that the terms of reference should remain unchanged.

(vi) *Places of refuge*

The Committee noted the information provided by CMI on international treaties relevant to the question of places of refuge and the view of CMI that the present regime did not provide clear guidance to parties involved in requests for places of refuge and that, accordingly, the development of a new international instrument should be considered.

The Committee considered a submission by the International Association of Ports and Harbors, in which it urged the Committee to develop a convention on places of refuge, as well as a submission containing a revised version of a proposed standard form letter of guarantee, previously submitted to the eighty-ninth session of the Legal Committee by the P&I Clubs, relating to vessels granted a place of refuge.

³⁸⁵ LEG 90/15, annex 7.

³⁸⁶ Resolution A.987(24).

While some delegations supported the proposal for a new convention, most were of the opinion that there was no need for it, given that the existing regime of liability and compensation for pollution damage worked reasonably well and would work even better once all the existing conventions entered into force.

The Committee agreed that the subject of places of refuge was very important and needed to be kept under review but that, for the time being, there was no need to develop a new convention.

(vii) *Monitoring the implementation of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention)*³⁸⁷

The Committee noted the information on the status of the HNS Convention submitted by the Secretariat and, in particular, that none of the, to date, eight Contracting States had submitted information on contributing cargo received. It also noted a declaration by the representative of the Oil Companies International Marine Forum expressing concern about the failure of Contracting States to submit estimates of their receipts.

The Committee recalled that, in accordance with article 43 of the HNS Convention, States, which ratify the Convention, were obliged, at the time of ratification, and annually thereafter, to provide information on the volume of contributing cargo received during the previous calendar year. To this effect, the Committee requested the Secretariat to write to the Contracting States to the HNS Convention underlining the importance of their obligation under article 43 of the Convention to report on contributing cargoes received.

The Committee noted the reports of several delegations on the progress made in their countries towards ratification of the Convention.

(viii) *Matters arising from the ninety-third session of the Ad Hoc Council Working Group on the Organization's Strategic Plan*

The Committee noted the information submitted by the Secretariat on the outcome of the *Ad Hoc Council Working Group on the Organization's Strategic Plan*. As requested by the Council, at its ninety-third session (15–19 November 2004), the Committee considered the draft high-level action plan prepared by the Council with a view to amending or adding, as necessary, high-level actions to address the anticipated activities of the Legal Committee over the remaining period of the Strategic Plan (to the end of 2009) in line with the Organization's strategic directions for the period 2006 to 2010, as set out in resolution A.944(23). It also considered the draft outcome-based priorities for the Legal Committee for the 2006–2007 biennium, with a view to identifying all of the Legal Committee's anticipated outputs over that period.

The Committee welcomed this new approach as being a transparent and balanced framework, but expressed concern that the draft high-level action plan will remain flexible enough to allow for adjustment of priorities when necessary.

³⁸⁷ LEG/CONF.10/8/2 of 9 May 1996.

With regard to the outcome-based priorities for the Legal Committee for the 2006-2007 biennium, the Committee recommended the inclusion, in the appropriate columns, of a reference to the development of conventions and to the preparation of guidance on interpretation and implementation of the 2002 Athens Protocol and other liability and compensation conventions.

(ix) *Technical co-operation—sub-programme for maritime legislation*

The Committee noted a progress report on technical co-operation activities in the field of maritime legislation, which had taken place from July to December 2004, and, in particular, that many requests for assistance for development of maritime legislation had been received, and assistance had been provided, within the framework of the IMO global programme on advisory assistance.

(x) *Work programme and long-term work plan*

The Committee noted the information provided by the Secretariat on the decision of the Council, at its ninety-third session, regarding the discontinuation of the Organization's long-term work plan.

(xi) *Any other business*

a. **Proposed CMI study on the implementation of procedural rules in limitation conventions**

The Committee noted a submission by CMI proposing the study of the implementation of procedural rules in limitation conventions and the possibility of establishing a set of uniform rules of procedure for use by States parties.

The Committee agreed to examine, in due course, the results of the CMI study and its implications, at which time it would then decide on the need for any further action on its part.

7. World Health Organization

(a) Constitutional developments

In 2005, no new State joined the World Health Organization (WHO). Thus, at the end of 2005, there were 192 member States and two Associate members of WHO.

The amendments to articles 24 and 25 of the WHO Constitution, adopted in 1998 by the fifty-first World Health Assembly³⁸⁸ to increase the membership of the Executive Board from thirty-two to thirty-four, entered into force on 15 September 2005. The amendment to article 7 of the Constitution, adopted in 1965 by the eighteenth World Health Assem-

³⁸⁸ World Health Assembly resolution WHA51.23, doc. WHA51/1998/REC/1, p. 26.

bly³⁸⁹ to suspend certain rights of members practising racial discrimination, had been accepted by 96 member States as of 31 December 2005. The amendment to article 74 of the Constitution, adopted in 1978 by the thirty-first World Health Assembly³⁹⁰ to establish Arabic as one of the authentic languages of the Constitution, had been accepted by 103 member States as of 31 December 2005. Acceptance by two-thirds of the member States, i.e. by 128 members, is required for the amendments to enter into force.

(b) Other normative developments and activities

(i) *WHO Framework Convention on Tobacco Control*

On 21 May 2003, the fifty-sixth World Health Assembly adopted, by resolution WHA56.1, the WHO Framework Convention on Tobacco Control (FCTC).³⁹¹ The WHO FCTC is the first global health treaty negotiated under the auspices of the World Health Organization and was developed in response to the globalization of the tobacco epidemic. It represents the first multilateral legal instrument designed to reduce the global burden of tobacco-related death and disease using evidence-based supply and demand reduction strategies. The FCTC entered into force on 27 February 2005 and became binding international law. The provisions of the FCTC set international standards and guidelines for tobacco control in areas including: tobacco price and tax increases, sales to and by minors, tobacco advertising, promotion and sponsorship, packaging and labelling of tobacco products, illicit trade and second-hand smoke.

(ii) *Revision of the International Health Regulations*

On 23 May 2005, the fifty-eight World Health Assembly adopted, by resolution WHA58.3, the revised International Health Regulations, referred to as the “International Health Regulations (2005)”. On 15 June 2005, in accordance with article 22 of the Constitution of the World Health Organization³⁹² and paragraph 1 of article 65 of the International Health Regulations (2005), the Director-General notified all States members and Associate members of WHO and other parties to any international sanitary agreement or regulations listed in article 58 of the International Health Regulations (2005), of the adoption by the Health Assembly of these revised Regulations.

Therefore, pursuant to article 22 of the WHO Constitution and paragraph 2 of article 59 of the International Health Regulations (2005), the Regulations shall enter into force 24 months after the date of the said notification, i.e. on 15 June 2007. Any member State of WHO intending to reject or to make reservations to the Regulations, as provided for in articles 61 and 62 thereof, respectively, may notify the Director-General accordingly within a period of 18 months from the date of the said notification, expiring on 15 December

³⁸⁹ World Health Assembly resolution WHA 18.48, *Official Records of the World Health Organization*, No. 143, p. 32.

³⁹⁰ World Health Assembly resolution WHA 31.18, *Official Records of the World Health Organization*, No. 247, p. 11.

³⁹¹ United Nations, *Treaty Series*, vol. 2302, p. 166.

³⁹² United Nations, *Treaty Series*, vol. 14, p. 185.

2006. In accordance with paragraph 1 of article 59, any rejection or reservation received thereafter shall have no effect. Any State intending to make a declaration concerning its domestic legislative and administrative arrangements pursuant to paragraph 3 of article 59 of the Regulation, may similarly submit such a declaration to the Director-General within a period of 18 months from the date of the notification.

The revision of the original International Health Regulations adopted in 1969 represents a significant development in the use of public international law instruments for public health purposes. The former regulations were designed to help monitor and control four serious infectious diseases—cholera, plague, yellow fever and smallpox. The new rules govern a broader range of public health emergencies of international concern, including emerging diseases. The purpose of the International Health Regulations (2005) is to ensure the maximum protection of people against the international spread of diseases, while minimizing interference with world travel and trade.

(iii) *Health legislation*

In 2005, the WHO Health Law Work Programme continued to administer the *International Digest of Health Legislation* and *Recueil international de Législation sanitaire*,³⁹³ which contains a selection of national, regional and international health legislations. The texts represent over 180 jurisdictions and cover a range of diverse subjects, such as health sector organization, the control of emerging communicable diseases (SARS and avian influenza), organ transplantation, blood transfusion, domestic violence, abortion, the employment of disabled persons, mental health, smoking control, patients' rights, pesticide residues in food, waste management, greenhouse gas emissions, radiation protection and road safety. The collection serves as an effective means for the exchange of information and technical cooperation with countries in the field of health legislation.

A new initiative was taken in 2005 by the WHO Right to Health Group to develop a systematic selection of national health legislations and to promote their diffusion at the international level through the *International Digest of Health Legislation* and *Recueil international de Législation sanitaire*. For this purpose, an annex entitled "Official journals and websites" was created, containing a set of links both to official journals and to a wide range of governmental and parliamentary websites at national and local levels. At the same time, the selection and presentation of constitutions, regional laws and local health legislations commenced.

The Organization continued to support member States, at their request, in developing appropriate national health legislation adapted to their needs. This country specific work, often conducted in collaboration with the WHO Regional and Country Offices, was performed, for example, with Lao People's Democratic Republic concerning the drafting of the national legislation on health personnel.

³⁹³ Available at <http://www.who.int/idhl/>.

(iv) *Other activities*

Created in March 2005, the Commission on Social Determinants of Health is the WHO vehicle to draw the attention of Governments, civil society, international organizations and donors to pragmatic ways of creating better social conditions for health. The launch of the Commission on Social Determinants of Health should add to the existing United Nations efforts to increase the chances of vulnerable people to a healthy life by acting upon the social and environmental causes of health inequities. The Commission's most important objective is to leverage policy change by turning existing public health knowledge into an actionable global agenda. The Commission will operate for three years starting March 2005, and will be producing scientifically informed policy recommendations and spearheading a political process to promote their implementation.

Furthermore, under the theme "Policy and Partnership for Action: Addressing the Determinants of Health" the sixth Global Conference on Health Promotion was held in August 2005, in Bangkok, Thailand. Following a series of meetings which began in Ottawa in 1986, this Conference reviewed the changes that have taken place in the past two decades and considered how to best utilize advances in technology to improve health promotion. The "Bangkok Charter for Health Promotion in a globalized world"³⁹⁴ was agreed to by the participants at the Conference. The Charter identifies major challenges, actions and commitments needed to address the determinants of health in a globalized world by reaching out to people, groups and organizations that are critical to the achievement of health.

In 2005, WHO continued to provide technical support to the United Nations human rights treaty monitoring bodies, in particular to the Committee on the Elimination of All Forms of Discrimination against Women and the Committee on Economic, Social and Cultural Rights, in relation to health and human rights issues.

8. International Atomic Energy Agency

(a) Membership

In 2005, Chad became a member State of the International Atomic Energy Agency (IAEA). By the end of the year, there were 139 member States.

(b) Privileges and immunities

In 2005, the status of the Agreement on Privileges and Immunities of the International Atomic Energy Agency, 1959,³⁹⁵ remained unchanged with 73 parties.

³⁹⁴ For the text of the Charter, see <http://www.who.int/healthpromotion/en/>.

³⁹⁵ United Nations, *Treaty Series*, vol. 374, p. 147.

(c) Legal instruments

(i) *Convention on the Physical Protection of Nuclear Material, 1979*³⁹⁶

In 2005, Bangladesh, Guinea, Jamaica, Kazakhstan, Nauru, Nicaragua and Turkmenistan became party to the Convention. By the end of the year, there were 116 parties.

(ii) *Convention on Early Notification of a Nuclear Accident, 1986*³⁹⁷

In 2005, Angola, Chile, El Salvador, Qatar and the United Republic of Tanzania became party to the Convention. By the end of the year, there were 97 parties.

(iii) *Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986*³⁹⁸

In 2005, Colombia, El Salvador, Qatar and the United Republic of Tanzania became party to the Convention. By the end of the year, there were 94 parties.

(iv) *Vienna Convention on Civil Liability for Nuclear Damage, 1963*³⁹⁹

In 2005, the Russian Federation became party to the Convention. By the end of the year, there were 33 parties.

(v) *Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention, 1988*⁴⁰⁰

In 2005, the status of the Joint Protocol remained unchanged with 24 parties.

(vi) *Convention on Nuclear Safety, 1994*⁴⁰¹

In 2005, India became party to the Convention. By the end of the year, there were 56 parties.

(vii) *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, 1997*⁴⁰²

In 2005, the status of the Joint Convention remained unchanged with 34 parties

³⁹⁶ United Nations, *Treaty Series*, vol. 1456, p. 101.

³⁹⁷ United Nations, *Treaty Series*, vol. 1439, p. 275.

³⁹⁸ United Nations, *Treaty Series*, vol. 1457, p. 133.

³⁹⁹ United Nations, *Treaty Series*, vol. 1063, p. 265.

⁴⁰⁰ United Nations, *Treaty Series*, vol. 1672, p. 293.

⁴⁰¹ United Nations, *Treaty Series*, vol. 1963, p. 293.

⁴⁰² United Nations, *Treaty Series*, vol. 2153, p. 303.

(viii) *Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage, 1997*⁴⁰³

In 2005, the status of the Protocol remained unchanged with five parties.

(ix) *Convention on Supplementary Compensation for Nuclear Damage, 1997*⁴⁰⁴

In 2005, the status of the Convention remained unchanged with three parties.

(x) *African Regional Cooperative Agreement for Research, Development and Training Related to Nuclear Science and Technology (AFRA)—(Third Extension)*⁴⁰⁵

Pursuant to article XIV.2 of the original Agreement, the third extension entered into force on 4 April 2005, upon expiration of the second extension, and will remain in force for an additional period of five years, i.e. through 3 April 2010.

In 2005, Algeria, Benin, Burkina Faso, Cameroon, the Central African Republic, the Democratic Republic of the Congo, Egypt, Eritrea, Ethiopia, Ghana, the Libyan Arab Jamahiriya, Madagascar, Mali, Mauritius, Morocco, Namibia, Niger, Nigeria, Senegal, Sierra Leone, South Africa, Tunisia, Uganda and the United Republic of Tanzania accepted the third extension. By the end of the year, there were 24 parties.

(xi) *Third Agreement to extend the 1987 Regional Cooperative Agreement for Research, Development and Training Related to Nuclear Science and Technology (RCA)*⁴⁰⁶

In 2005, the status of the Agreement remained unchanged with 16 parties.

(xii) *Cooperation Agreement for the Promotion of Nuclear Science and Technology in Latin America and the Caribbean (ARCAL)*⁴⁰⁷

The Agreement, pursuant to its article XI, came into force on 5 September 2005, after the deposit of the tenth instrument of ratification. In 2005, Argentina, Chile, Costa Rica, Cuba, Ecuador, El Salvador, Haiti, Mexico, Panama, Peru and Venezuela became party to the Agreement. By the end of the year, there were 11 parties.

⁴⁰³ INFCIRC/566.

⁴⁰⁴ INFCIRC/567.

⁴⁰⁵ INFCIRC/377 and INFCIRC/377/Add.18 (Third Extension).

⁴⁰⁶ INFCIRC/167 and INFCIRC/167/Add.20 (Third Extension).

⁴⁰⁷ INFCIRC/582.

(xiii) *Cooperative Agreement for Arab States in Asia for Research, Development and Training Related to Nuclear Science and Technology (ARASIA)*⁴⁰⁸

In 2005, the status of the Agreement remained unchanged with seven parties.

(xiv) *Revised Supplementary Agreement Concerning the Provision of Technical Assistance by the IAEA (RSA)*⁴⁰⁹

In 2005, Angola concluded the RSA Agreement. By the end of the year, there were 101 member States that had concluded the RSA Agreement with the Agency.

(xv) *Amendment to the Convention on the Physical Protection of Nuclear Material, 2005*

The Amendment to the Convention on the Physical Protection of Nuclear Material was adopted on 8 July 2005 by the Amendment Conference, held from 4 to 8 July 2005.⁴¹⁰ The Amendment requires no signature but is subject only to ratification, acceptance or approval. In 2005, Turkmenistan accepted the Amendment. By the end of the year, there was one party.

(xvi) *Optional Protocol Concerning the Compulsory Settlement of Disputes to the Vienna Convention on Civil Liability for Nuclear Damage, 1963*⁴¹¹

In 2005, the status of the Protocol remained unchanged with two parties.

(d) Legislative assistance activities

As part of its technical cooperation programme for 2005, 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 11 countries by means of written comments or advice on specific national legislation submitted to the Agency for review. Also, at the request of member States, trainings on issues related to nuclear legislation were provided to 17 fellows.

In addition, the legislative assistance activities of IAEA included the organization of a regional meeting for senior government officials on the International Legal Framework Governing Nuclear Safety, Security and Safeguards, attended by participants from 32 French and English speaking African countries, which was held at IAEA Headquarters in Vienna from 12 to 14 December 2005.

⁴⁰⁸ INFCIRC/613/Add.1.

⁴⁰⁹ INFCIRC/267.

⁴¹⁰ Adopted on 8 July 2005 by the Conference to Consider Proposed Amendments to the Convention on the Physical Protection of Nuclear Material.

⁴¹¹ INFCIRC/500/Add. 3.

(i) *Convention on the Physical Protection of Nuclear Material, 1979*

By 19 January 2005, the Director General had received requests from the majority of States parties to the Convention on the Physical Protection of Nuclear Material (the CPPNM), to convene a conference to consider proposed amendments to the CPPNM. These proposed amendments had been circulated by the Director General on 5 July 2004 in accordance with article 20, paragraph 1, of the CPPNM, at the request of the Government of Austria and 24 cosponsoring States.

The Conference to consider the amendments to the CPPNM was held at IAEA Headquarters from 4 to 8 July 2005. Eighty-eight States parties and the European Atomic Energy Community (Euratom) participated in the Conference. Eighteen States not party to the CPPNM and three intergovernmental organizations participated as observers. While there were still some open issues at the beginning of the Conference, on 8 July 2005, on the basis of its deliberations, the Conference adopted by consensus an amendment to the CPPNM. Delegates of 81 States parties signed the Final Act of the Conference.⁴¹²

The Amendment provides for an expanded regime by strengthening the CPPNM in a number of areas. First, the Amendment extends the scope of application of the CPPNM by requiring States to establish, implement and maintain a physical protection regime applicable to the physical protection of nuclear material in domestic use, storage and transport and of nuclear facilities. Secondly, with regard to the prevention and combating of offences relating to nuclear material and nuclear facilities worldwide, the Amendment provides for new offences and the revision of the majority of the existing offences under the CPPNM. In particular, it requires States to bring under their jurisdiction and make punishable under their national laws certain offences including theft, robbery, smuggling of nuclear material or sabotage of nuclear facilities, as well as acts related to directing and contributing to the commission of such offences. Thirdly, new arrangements for expanded cooperation, assistance and coordination amongst States, for example, regarding rapid measures to locate and recover stolen or smuggled nuclear material, to mitigate any radiological consequences of sabotage and to prevent and combat relevant offences, are foreseen.

On 25 July 2005, the Director General, as depositary, circulated a certified copy of the Amendment to the CPPNM to all States parties and Euratom. At the same time, Governments were invited to deposit with the Director General, at their earliest convenience, their instruments of ratification, acceptance or approval of the Amendment to the CPPNM. The Amendment will enter into force on the thirtieth day after the date on which two thirds of the States parties have deposited with the Director General their relevant instruments.

On 19 and 29 September 2005, the IAEA Board of Governors and General Conference, in welcoming the Amendment to the Convention, encouraged “all States party to the Convention to ratify the amendment as soon as possible and to deposit instruments of ratification, acceptance or approval with the depositary to enable the early entry into force of the amendment.” In addition, “all States party to the Convention [were encouraged] to act in accordance with the object and purpose of the amendment until such time as the amendment enters into force”.

⁴¹² CPPNM/AC/5.

(ii) *Convention on Nuclear Safety, 1994*

The third Review Meeting of the Contracting parties to the Convention on Nuclear Safety was held at IAEA Headquarters in Vienna, from 11 to 22 April 2005. It was attended by 50 Contracting parties, including over 500 delegates. During the meeting, the Contracting parties conducted a thorough peer review of the national reports that they had submitted in 2004. The many important findings and conclusions made during the Review Meeting will serve as valuable guidance for the Agency in implementing its future safety programmes. The Contracting parties made specific reference to the relevant IAEA Safety Standards as a tool to assist in the review process and recognized the value of the Agency's safety services, such as operational safety and regulatory reviews.⁴¹³

(iii) *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, 1997*

In preparation for the second Review Meeting of the Contracting Parties to the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (the Joint Convention), scheduled to be held at IAEA Headquarters from 15 to 24 May 2006, an organizational meeting took place in Vienna from 7 to 8 November 2005. This meeting elected the Officers and established the Country Groups for the Review Meeting.

Pursuant to article 31, paragraph (ii), of the Joint Convention, the Contracting parties also held, on 7 November 2005, an Extraordinary Meeting to consider proposed revised Rules of Procedure and Financial Rules, revised Guidelines regarding the Review Process and new Guidelines regarding the Topic Sessions in the Review Process.

(iv) *Code of Conduct on the Safety and Security of Radioactive Sources and Guidance on the Import and Export of Radioactive Sources*⁴¹⁴

The Code of Conduct on the Safety and Security of Radioactive Sources is a non-binding international legal instrument which applies to civilian radioactive sources that may pose a significant risk to individuals, society and the environment. The Code of Conduct's objectives are to achieve and maintain a high level of safety and security of radioactive sources. By the end of 2005, 79 States had, further to General Conference resolution GC(47)/RES/7.B, expressed their political support and intention to work towards following the Code of Conduct.

One section of the Code of Conduct concerns the import and export of high activity radioactive sources. In this respect, additional details are provided for in the Code of Conduct on the Safety and Security of Radioactive Sources: Guidance on the Import and Export of Radioactive Sources (the Guidance), which was endorsed by the General Conference in 2004 and published as Guidance supplementary to the Code of Conduct. Work has continued throughout 2005 to facilitate the implementation of the Guidance and by the end

⁴¹³ For the Summary Report of the third Review Meeting, see CNS-RM-2005/08 Final.

⁴¹⁴ IAEA/CODEOC/2004 (2004).

of 2005, 17 countries had written to the Director General, further to General Conference resolution GC(48)/RES/10.D, indicating their commitment to follow the Guidance.

Noting the findings of the International Conference on Safety and Security of Radioactive Sources, Towards a Global System for Continuous Control throughout their Life Cycle in Bordeaux, the Agency held a meeting at IAEA Headquarters, in Vienna, in December 2005, for countries to share experiences in implementing the Guidance. At the meeting, participants noted the multilateral nature of the Guidance and recognized the importance of States making a political commitment to implement it in a harmonized manner. In this context, a number of future challenges were identified that will need to be addressed if the Guidance is to be implemented in a harmonized manner.

(v) *Code of Conduct on the Safety of Research Reactors*

The Code of Conduct on the Safety of Research Reactors was approved by the IAEA Board of Governors in March 2004⁴¹⁵ and subsequently endorsed by the IAEA General Conference in September 2004.⁴¹⁶

In response to the request of the third Review Meeting of the Contracting parties to the Convention on Nuclear Safety, the Agency convened an open-ended meeting on the effective application of the Code of Conduct on the Safety of Research Reactors at IAEA Headquarters in Vienna, in December 2005. The meeting recommended, *inter alia*, that the Agency organize triennial meetings to exchange experience and lessons learned, identify good practices and discuss plans, difficulties and assistance needed in applying the Code. To prepare for the triennial meetings, the IAEA Secretariat will organize one or more regional meetings. The first meeting is planned to be held in Morocco in November 2006 for member States from Africa to provide a forum for participants to present and share their experience on the management of research reactor safety and the application of the Code of Conduct. The open-ended meeting also called for an Internet site on which documents related to the periodic meetings can be posted to facilitate exchange of information.

Finally, the meeting recognized the benefits of the Code of Conduct on the Safety of Research Reactors towards enhancing research reactors safety worldwide and there was a call for the Code of Conduct to be integrated into all Agency safety assistance and review activities, and for consideration to be given to updating the Project and Supply Agreements to reflect the provisions of the Code.

(vi) *Safeguards Agreements*

During 2005, Safeguards Agreements pursuant to the Treaty on the Non-proliferation of Nuclear Weapons (NPT) with Marshall Islands,⁴¹⁷ Niger,⁴¹⁸ Palau⁴¹⁹ and Tanzania⁴²⁰

⁴¹⁵ GC(48)/7.

⁴¹⁶ GC(48)/RES/10, A 8.

⁴¹⁷ Reproduced in IAEA Document: INFCIRC/653.

⁴¹⁸ Reproduced in IAEA Document: INFCIRC/664.

⁴¹⁹ Reproduced in IAEA Document: INFCIRC/650.

⁴²⁰ Reproduced in IAEA Document: INFCIRC/643.

entered into force. In addition, Estonia⁴²¹ and Slovakia⁴²² acceded to the Safeguards Agreement between the IAEA, Euratom and the non-nuclear weapon States of the European Community. Safeguards Agreements pursuant to the NPT were signed by Benin, Cape Verde, Comoros, Saudi Arabia, Turkmenistan and Uganda, but had not entered into force as of December 2005. In addition, a Safeguards Agreement with Botswana pursuant to the NPT was approved by the IAEA Board of Governors.

In 2005, Protocols Additional to the Safeguards Agreements between the IAEA and Afghanistan,⁴²³ Malta,⁴²⁴ Marshall Islands,⁴²⁵ Nicaragua,⁴²⁶ Palau,⁴²⁷ Switzerland,⁴²⁸ Tanzania⁴²⁹ and the former Yugoslav Republic of Macedonia⁴³⁰ entered into force. In addition, Estonia⁴³¹ and Slovakia⁴³² acceded to the Protocol Additional to the Safeguards Agreement between the IAEA, Euratom and the non-nuclear weapon States of the European Community. Additional Protocols were signed by Belarus, Benin, Cape Verde, Colombia, Comoros, Gabon, Honduras, Malaysia, Singapore, Thailand, Turkmenistan, Tunisia and Uganda, but had not entered into force as of December 2005. Additional Protocols with Botswana, Fiji, Liechtenstein and Senegal were approved by the IAEA Board of Governors in 2005.

9. United Nations Industrial Development Organization

(a) Agreements with States⁴³³

Argentina

Memorandum of understanding between the United Nations Industrial Development Organization and the Ministry of Federal Planning, Public Investment and Services of the Republic of Argentina, signed on 15 April 2005.

Memorandum of understanding between the United Nations Industrial Development Organization and the Government of the Cordoba Province of the Republic of Argentina, signed on 7 September 2005.

Memorandum of understanding between the United Nations Industrial Development Organization and the Government of the Province of Buenos Aires of the Republic of Argentina, signed on 5 December 2005.

⁴²¹ Reproduced in IAEA Document: INFCIRC/193/Add.11.

⁴²² Reproduced in IAEA Document: INFCIRC/193/Add.9.

⁴²³ Reproduced in IAEA Document: INFCIRC/257/Add.1.

⁴²⁴ Reproduced in IAEA Document: INFCIRC/387/Add.1.

⁴²⁵ Reproduced in IAEA Document: INFCIRC/653/Add.1.

⁴²⁶ Reproduced in IAEA Document: INFCIRC/246/Add.1.

⁴²⁷ Reproduced in IAEA Document: INFCIRC/650/Add.1.

⁴²⁸ Reproduced in IAEA Document: INFCIRC/264/Add.1.

⁴²⁹ Reproduced in IAEA Document: INFCIRC/643/Add.1.

⁴³⁰ Reproduced in IAEA Document: INFCIRC/610/Add.1.

⁴³¹ Reproduced in IAEA Document: INFCIRC/193/Add.12.

⁴³² Reproduced in IAEA Document: INFCIRC/193/Add.10.

⁴³³ This list contains signed Agreements deposited with the Legal Service of United Nations Industrial Development Organization for safekeeping.

Azerbaijan

Framework programme on cooperation between the United Nations Industrial Development Organization and the Government of the Republic of Azerbaijan, signed on 4 February 2005.

Burundi

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and H.E. Mr. Jean-Baptiste Gahimbare, Minister of Community Development of the Government of Burundi, signed on 21 July 2005.

Congo

Memorandum of understanding on the United Nations Industrial Development Organization's programme in the Republic of Congo, signed on 30 November 2005.

Germany

Arrangement between the United Nations Industrial Development Organization and the Government of the Federal Republic of Germany for the purpose of supporting the project "Strengthening the Local Production of Generic Drugs in Least Developed Countries (LDCs), through the Promotion of SMEs, Business Partnerships, Investment Promotion and South-South Co-operation", signed on 15 and 28 September 2005.

Haiti

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and H.E. Mr. Gerard Latortue, Prime Minister of the Republic of Haiti, signed on 28 November 2005.

Italy

Trust fund agreement between the United Nations Industrial Development Organization and the Government of Italy regarding the implementation of a Montreal Protocol project in China, entitled "Methyl Bromide National Phase Out Plan-China", signed on 20 April and 8 August 2005.

Lebanon

Trust fund agreement between the United Nations Industrial Development Organization and the Ministry of Industry, Government of the Lebanese Republic concerning the Lebanese Government's 50 per cent cost sharing to support the development of an institutional capacity for annual surveys of the manufacturing sector of the Lebanese Republic, signed on 2 February 2005.

Madagascar

Letter of agreement between the United Nations Industrial Development Organization and the Ministry of Industrialization, Commerce and Private Sector Development of Madagascar for a programme under national execution, signed on 3 June and 11 July 2005.

Mozambique and the Association for Development of People for People

Memorandum of understanding between the United Nations Industrial Development Organization and the Ministry of Industry of Commerce and the Association for Development of People for People, Itoculo, Mozambique, signed on 22 June and 21 July 2005.

Netherlands

Trust fund agreement between the United Nations Industrial Development Organization and the Netherlands Minister for Development Cooperation regarding the implementation of a project in Malakal, Sudan, entitled "Vocational Technical Training for Youth Entrepreneurial Development in Malakal, Sudan", signed on 16 October 2005.

Slovakia

Administrative arrangement between the United Nations Industrial Development Organization and the Government of the Slovak Republic with regard to a special-purpose contribution to the Industrial Development Fund, signed on 23 September 2005.

Slovenia

Cooperation agreement and administrative arrangement between the United Nations Industrial Development Organization and the Government of the Republic of Slovenia with regard to special-purpose contributions to the Industrial Development Fund, signed on 22 June 2005.

Turkey

Exchange of letters extending the Agreement between the Republic of Turkey and the United Nations Industrial Development Organization regarding the establishment of the Centre for Regional Cooperation in Turkey, signed on 23 March and 21 April 2005.

(b) Agreements within the United Nations system*International Labour Organization*

Inter-agency letter of agreement between the United Nations Industrial Development Organization and the International Labour Organization regarding the programme "Support Programme for Private Sector Development and Sustainable Livelihood-Services of an HIV/AIDS/World of Work Expert", signed on 23 November 2004 and 11 February 2005.

International Maritime Organization

Letter of agreement between the United Nations Industrial Development Organization and the International Maritime Organization, signed on 6 and 26 September 2005.

United Nations

Agreement between the United Nations Industrial Development Organization and the United Nations regarding the funding of a project in Malawi, entitled “Empowering Poor Rural Communities with Labour-saving Technologies for Increased Labour Productivity, Food Production and Income Generation”, signed on 14 April and 12 May 2005.

Agreement between the United Nations Industrial Development Organization and the United Nations regarding the funding of a project in Guinea, entitled “Quick Impact Programme for Refugee Zones: Community-based Production Centres and Community Rehabilitation Projects with Skills Upgrading in Forest Guinea”, signed on 16 May and 6 June 2005.

Agreement between the United Nations Industrial Development Organization and the United Nations regarding the funding of a project in Uganda, entitled “Multi-skills Training and Community Service Facilities for Sustainable Livelihoods and Poverty Alleviation-Reintegration of ex-Combatants and Former Rebels (Phase I and II)”, signed on 25 and 30 November 2005.

United Nations Development Programme, the Food and Agriculture Organization of the United Nations and the World Food Programme

Memorandum of understanding between the United Nations Industrial Development Organization, the United Nations Development Programme, the Food and Agriculture Organization and the World Food Programme regarding the operational aspects of the joint programme “Strengthening Human Security through Sustainable Human Development in North-western Tanzania”, signed on 23 August, 29 August and 11 November 2005.

United Nations Office for the Coordination of Humanitarian Affairs

Memorandum of understanding between the United Nations Industrial Development Organization and the United Nations Office for the Coordination of Humanitarian Affairs, signed on 5 and 22 September 2005.

United Nations Office on Drugs and Crime

Memorandum of understanding between the United Nations Industrial Development Organization and the United Nations Office on Drugs and Crime, signed on 3 March 2005.

Agreement between the United Nations Industrial Development Organization and the United Nations Office on Drugs and Crime on the provision, maintenance and support of UNIDO’s Integrated Management Information System (IMIS) production environment for personnel administration and payroll, signed on 16 and 22 December 2005.

(c) Agreements with intergovernmental organizations

Common Fund for Commodities and the Intergovernmental Group on Hard Fibres represented by the Food and Agriculture Organization of the United Nations

Agreement between the United Nations Industrial Development Organization, the Common Fund for Commodities and the Intergovernmental Group on Hard Fibres represented by the Food and Agriculture Organization of the United Nations for the implementation of the project "Operationalization of a Pilot Facility for a Continuous Sisal Fibre Extraction/Production Process", signed on 19 and 30 May, and 20 June 2005.

Common Fund for Commodities and the International Network for Bamboo and Rattan

Project agreement between the United Nations Industrial Development Organization, the Common Fund for Commodities and the International Network for Bamboo and Rattan regarding the market based development of bamboo in Eastern Africa-employment and income generation for poverty alleviation, signed on 22 June, 12 July and 5 August 2005.

General Secretariat of the Organization of American States

Memorandum of understanding between the United Nations Industrial Development Organization and the General Secretariat of the Organization of American States, signed on 18 October 2005.

Inter-American Investment Corporation

Memorandum of understanding between the United Nations Industrial Development Organization and the Inter-American Investment Corporation (member of the Inter-American Development Bank Group), signed on 21 April and 3 May 2005.

(d) Agreements with other entities

Bahrain Development Bank

Rental agreement between the United Nations Industrial Development Organization and the Bahrain Development Bank, signed on 10 May 2005.

Beijing Housing Service Corporation for Diplomatic Missions

Lease contract on office building no. 141 between the United Nations Industrial Development Organization and the Beijing Housing Service Corporation for Diplomatic Missions, signed on 21 November 2005.

Canadian International Development Agency

Trust fund agreement between the United Nations Industrial Development Organization and the Canadian International Development Agency/Gender Equity Support Project Phase II regarding the implementation of a project in Kenya, entitled “Assistance to Women Entrepreneurs (WEs) in Kenya for Increased Market Access and Institutional Capacity-Building”, signed on 8 and 15 August 2005.

Export Promotion Bureau, Government of Pakistan

Trust fund agreement between the United Nations Industrial Development Organization and the Export Promotion Bureau, Government of Pakistan, regarding the implementation of a project in Pakistan, entitled “Implementation of Sub-projects in five Industrial SME Clusters for Export Growth and Enhanced Productivity and Development of a National Training Course for Cluster Development Agents”, signed on 2 November 2004 and 10 January 2005.

Iran Small Industries and Industrial Parks Organization (ISIPO)

Trust fund agreement between the United Nations Industrial Development Organization and the Iran Small Industries and Industrial Parks Organization of the Islamic Republic of Iran regarding the implementation of a project in the Islamic Republic of Iran, entitled “Development of Industrial SME Clusters for Enhanced Productivity and Export Growth”, signed on 12 April and 8 May 2005.

Istanbul Chamber of Commerce

Memorandum of understanding between the United Nations Industrial Development Organization and the Istanbul Chamber of Commerce, Turkey, signed on 3 February 2005.

Tanzania Sisal Board (TSB) and Katani Limited (Katani)

Project implementation agreement between the United Nations Industrial Development Organization, the Tanzania Sisal Board and Katani Limited for the implementation of the project “Cleaner Integral Utilization of Sisal Waste for Biogas and Biofertilizers”, signed on 10 and 15 November 2005.

Complutense University

Amendment No. 1 to the memorandum of understanding between the United Nations Industrial Development Organization and Universidad Complutense-Istituto Complutense de Estudios Internacionales, Madrid, Spain, signed on 22 and 27 July 2005.

University of California, Berkeley

Memorandum of understanding between the United Nations Industrial Development Organization and the University of California, Berkeley, signed on 23 November 2004 and 3 March 2005.

10. World Intellectual Property Organization

(a) Introduction

In the year 2005, the World Intellectual Property Organization (WIPO) concentrated on the implementation of substantive work programs through three sectors: cooperation with member States; international registration of intellectual property rights; and intellectual property treaty formulation and normative development.

(b) Cooperation for development activities

In 2005, WIPO's Cooperation with Developing Countries focused on activities enabling Governments and other institutions of beneficiary countries to realize the full potential of their intellectual property assets. Providing traditional legal and technical assistance, WIPO encouraged and supported member States to develop and implement nationally focused strategies aimed at creating, owning and exploiting intellectual property for economic, social and cultural development.

Legislative advice was frequently requested from WIPO, particularly by least developing countries as they prepare to comply with the obligations of the Agreement on Trade Related Aspects of Intellectual Property Rights by 2013 or by those developing countries preparing for accession to the World Trade Organization. In this regard, substantive legislative and technical assistance was provided in different areas, such as: institution building; human resources development; information technology; genetic resources; traditional knowledge and folklore and protection of traditional cultural expressions; Small and Medium-Sized Enterprises (SMEs); and establishment of collective management societies.

The WIPO Worldwide Academy continued its efforts to provide developing countries and countries in transition with significant activities focused on policy development, professional training and distance learning programs. The introductory "Primer on Intellectual Property", accessible on line with no registration requirements or time limitation, was accessed by 852 participants. The Distance Learning Program initiated two additional advanced online distance learning courses on "Traditional Knowledge and Biotechnology" and a specialized course on the "Protection of New Plant Varieties".

(c) Norm-setting activities

One of the principal tasks of WIPO is to promote the harmonization of intellectual property laws, standards and practices among its member States through the progressive development of international approaches in the protection and administration of intellectual property rights. In this respect, 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 to centralize the discussions, coordinate efforts and establish priorities in these areas.

(i) *Standing Committee on the Law of Patents (SCP)*

At the eleventh session of SCP, which took place in June 2005, discussions were mainly devoted to the consideration of options for the future work plan of the Committee in respect to the draft Substantive Patent Law Treaty.

In this respect, at their forty-first series of meetings in September 2005, the Assemblies of WIPO member States decided to hold an informal open forum in the first quarter of 2006. The objective of the open forum will be to focus on all the issues that have been raised in the draft Substantive Patent Law Treaty, including those issues proposed by the member States. Additionally, it was agreed that SCP would meet in a three-day informal meeting before its ordinary session in order to finalize the future work program of the Committee by taking into account the outcome of the open forum discussions.

(ii) *Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT)*

In line with its intensive work for the progressive development of international law, at its fourteenth session in April 2005, SCT approved the text of a basic proposal for the Diplomatic Conference for the Adoption of a Revised Trademark Law Treaty, to be held in 2006.

SCT worked in particular on provisions concerning communications, relief measures in respect of time limits, trademark licenses and administrative provisions of the draft revised Trademark Law Treaty and made significant progress approving by consensus a text to go forward as the basic proposal for the Diplomatic Conference.

(iii) *Standing Committee on Copyright and Related Rights (SCCR)*

In preparation of a possible diplomatic conference on the protection of broadcasting organizations, SCCR discussed extensively a “Second Revised Consolidated Text” during its thirteenth session held in November 2005. On this occasion, it was agreed that a new revised consolidated text would be prepared and submitted to the next session of the SCCR in May 2006.

The new revised document will be presented in the form of a Draft Basic Proposal and will contain “a clean text” of a draft treaty without presentation of alternative provisions, including only a draft solution in relation to webcasting, in the form of a draft appendix, without presenting different options.

However, to enable the Assemblies of WIPO member States to recommend the convening of a diplomatic conference, either in December 2006 or at an appropriate date in 2007, the Committee additionally prepared a “Working Paper on Alternative and Non-Mandatory Solutions on the Protection in Relation to Webcasting”⁴³⁴ to accompany the Draft Basic Proposal.

⁴³⁴ SCCR/12/5 PROV.

(iv) *Standing Committee on Information Technologies*

The Standards and Documentation Working Group of the Standing Committee on Information Technologies held its sixth session from 19 to 22 September 2005 and adopted certain revisions to WIPO standards, facilitating access to and use of publicly available industrial property information associated with the grant of patents, trademarks and industrial designs.⁴³⁵

(d) **International registration activities**

(i) *Patents*

The year 2005 was significantly marked by the entry into force on 28 April 2005, of the Patent Law Treaty⁴³⁶ concluded in 2000 and aiming to harmonize and streamline formal procedures in respect of national and regional patent applications and patents.

The amendments to the Patent Cooperation Treaty (PCT) Regulations, adopted by the PCT Assembly in September 2004 and implemented in April 2005, required, *inter alia*, a revision of the PCT Applicant's Guide in English and French and a publication of the revised version of the PCT Regulations in various languages together with the updating of PCT indexes and revision of reference resources.

During the period under review, 134,504 international patent applications filed worldwide were received, representing a growth of 9.7 per cent.

Furthermore, four new States adhered in 2005 to the PCT, namely Comoros, the Libyan Arab Jamahiriya, Nigeria and Saint Kitts and Nevis, bringing the total number of Contracting parties to 128.

(ii) *Trademarks*

The use of the international trademark registration system continued to grow in 2005. During the year 2005, 33,169 new international trademark registrations were filed and 7,496 renewals were processed together with 10,227 subsequent designations.

With the adherence of Bahrain to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks in 2005, the number of Contracting parties rose to 67 and the total number of member States of the Madrid Union to 78.

(iii) *Industrial designs*

In 2005, the International Bureau registered 1,135 deposits of international industrial designs and 3,884 renewals for a total of 5,019.

During the same year, the former Yugoslav Republic of Macedonia, Latvia and Singapore became party to the Geneva Act of the Hague Agreement, bringing the total number of Contracting parties to 19.

⁴³⁵ For the report of the Working Group, see SCIT/SDWG/6/11.

⁴³⁶ United Nations, *Treaty Series*, vol. 2340, p. 3.

(iv) *Appellations of Origin*

During the year under review, the International Bureau received five new applications, which brought to 854 the total number of appellations of origin registered under the Lisbon Agreement for the Protection of Appellations of Origins and their International Registration (Lisbon Agreement), 781 of which are still in force. Further, as of February 2005, the database “Lisbon express” became available to all applicants.

The adherence of Iran (Islamic Republic of) and Peru to the Lisbon Agreement brought the total number of Contracting parties to 24.

(e) **Intellectual property and global issues**

(i) *Genetic resources, traditional knowledge and folklore*

At its eighth session, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore made solid progress towards a strong international framework through a range of practical initiatives for capacity building, legal and policy guidance and defensive protection against illegitimate patenting of Traditional Knowledge. In particular, the work of the Committee focused mainly on cooperation with other international and regional organizations, national authorities and other stakeholders.

The Intergovernmental Committee reviewed the international dimension of the legal protection of Traditional Knowledge and expressions of folklore and Traditional Cultural Expressions against misuse and misappropriation. The Intergovernmental Committee also agreed to recommend to the Assemblies of member States of WIPO the extension of its mandate in order to continue its work on Traditional Knowledge, Traditional Cultural Expressions, folklore and genetic resources.

(ii) *SMEs and intellectual property*

Activities concerning the SMEs included two major events held in 2005 aiming at broadening the scope of understanding and the level of use of the intellectual property system in connection with SMEs. The first one, the “Training Program on Intellectual Property Management of Innovation in SMEs” organized in cooperation with the International Network of Small and Medium Sized Enterprises, aimed at enhancing the knowledge of the use of tools of the intellectual property system for promoting innovation. The second one, the “Third Annual WIPO Forum on Intellectual Property and SMEs for Intellectual Property Offices and other relevant Institutions in the Organisation for Economic Cooperation and Development and the South Mediterranean Basin Countries” had as the objective to provide an interactive platform for more than 40 participants to share policies, practices and experiences in their respective outreach activities.

(iii) *WIPO Arbitration and Mediation Center*

In June 2005, the WIPO Arbitration and Mediation Center received its 7,500th case under the Uniform Domain Name Dispute Resolution Policy.

The Center continued its tasks as the leading Internet domain name dispute resolution provider. The core domain name policy administered by the Center remained the Uniform Domain Name Dispute Resolution Policy with procedures administered in 12 languages involving parties from 124 countries. In addition to its work in the generic top-level domains in 2005, the Center administered 38 cases involving names registered in country code top-level domains. The total number of country code top-level domains registration authorities designating the Center as a dispute resolution provider rose in 2005 to 45, 2 more than in 2004.

The Center has also developed the program Electronic Case Facility to further enhance the efficient administration of WIPO mediation and arbitration proceedings.

(iv) *New members and new accessions*

In 2005, 45 new instruments of ratification and accession were received and processed in respect of WIPO-administered treaties, representing a significant increase of accessions or ratifications deposited by developing countries. 70 per cent of accessions or ratifications came from developing countries, 24 per cent from countries in transition to a market economy and 6 percent from developed countries.

The following figures show the new country adherences to the treaties, with the second figure in brackets being the total number of States party to the corresponding treaty by the end of 2005.⁴³⁷

(a) Convention Establishing the World Intellectual Property Organization, 1967: 2 (183);

(b) Paris Convention for the Protection of Industrial Property, 1883: 1 (169);

(c) Berne Convention for the Protection of Literary and Artistic Works, 1886: 3 (160);

(d) Patent Cooperation Treaty, 1970: 4 (128);

(e) Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, 1989: 1 (67);

(f) Trademark Law Treaty, 1994: 1 (34);

(g) Patent Law Treaty, 2000: 4 (13);

(h) Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, 1957: 4 (78);

(i) Locarno Agreement Establishing an International Classification for Industrial Designs, 1968: 1 (45);

(j) Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks, 1973: 1 (21);

⁴³⁷ For the texts and status of the conventions listed in this section, see under "Treaties" at <http://www.wipo.int>.

- (k) WIPO Copyright Treaty, 1996: 6 (56);
- (l) WIPO Performances and Phonograms Treaty, 1996: 7 (55);
- (m) Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, 1958: 2 (24);
- (n) Nairobi Treaty on the Protection of the Olympic Symbol, 1981: 1 (44);
- (o) Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, 1977: 1 (61);
- (p) Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961: 3 (82); and
- (q) Geneva Act of the Hague Agreement, 1999: 3 (19).

11. International Fund for Agricultural Development

(a) Membership

At its twenty-eighth session, on 16 February 2005, the Governing Council of the International Fund for Agricultural Development (IFAD) approved⁴³⁸ the non-original membership in the Organization of Kiribati and decided to classify this State as member of List C (former category III) in accordance with articles 3.2 (b) and 13.1 (c) of the Agreement Establishing IFAD⁴³⁹ and section 10 of the By-laws for the Conduct of the Business of IFAD.

(b) Legal developments and other

At its twenty-eighth session, on 16 and 17 February 2005, the Governing Council, acting upon the proposal for the appointment of President,⁴⁴⁰ decided to appoint Mr. Lennart Båge of Sweden as President of IFAD for a second term of office of four years, effective from 1 April 2005.⁴⁴¹

In addition, in accordance with article 4.3 of the Agreement Establishing IFAD, which provides that in order to assure continuity in the operations of the Organization, the Governing Council shall periodically review the adequacy of the resources available to IFAD, the Governing Council approved the Establishment of a Consultation on the seventh Replenishment of IFAD's Resources.⁴⁴²

The Cooperation Agreement with the Organization for Economic Cooperation and Development that IFAD had been authorized to establish by the Executive Board during its eighty-third session, was signed on 28 July 2005 and submitted to the Executive Board for information at its eighty-fifth session held from 6 to 8 September 2005.⁴⁴³

⁴³⁸ Resolution 135/XXVIII.

⁴³⁹ United Nations, *Treaty Series*, vol. 1059, p. 191.

⁴⁴⁰ GC 28/L.3 and GC 28/C.R.P.1.

⁴⁴¹ In accordance with article 6, section 8 (a), of the Agreement Establishing IFAD.

⁴⁴² Resolution 137/XXVIII.

⁴⁴³ EB 2005/85/INF.6.

At the same session, the Executive Board considered the IFAD Policy on Preventing Fraud and Corruption in its Activities and Operations.⁴⁴⁴ Further elaborations and clarifications were sought at that session on some aspects of the document and it was agreed that the policy would be amended and circulated to all Executive Board Directors for approval on a no-objection basis. The amended Policy was so circulated and no objections were raised. It was thus considered approved by the Executive Board and submitted to it at its eighty-sixth session for information.⁴⁴⁵ The IFAD Policy on Preventing Fraud and Corruption in its Activities and Operations aims at affirming and communicating the resolve of IFAD to prevent and combat fraud and corruption in its activities and operations, as well as describing its ongoing efforts in this area and outlining actions that will be taken in implementing the Policy.

12. World Trade Organization

(a) Membership

During 2005, Saudi Arabia became a member of the World Trade Organization (WTO), making the total membership at the end of the year 149.

(b) Amendment to the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS agreement)

On 6 December 2005, WTO members approved changes to the Agreement on Trade-related Aspects of Intellectual Property Rights,⁴⁴⁶ making permanent a decision on patents and public health originally adopted in 2003. This General Council decision⁴⁴⁷ means that for the first time a core WTO agreement has been amended.

(c) Dispute settlement

During 2005, 11 requests for consultation were received pursuant to article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes.⁴⁴⁸ The Dispute Settlement Body established panels in the following cases:

- (i) European Communities—Selected customs matters (complaint by the United States) WT/DS315;
- (ii) European Communities and certain member States—Measures affecting trade in large civil aircraft (complaint by the United States) WT/DS316;
- (iii) United States—Measures affecting trade in large civil aircraft (complaint by the European Communities) WT/DS317;

⁴⁴⁴ EB 2005/85/R.5.

⁴⁴⁵ EB 2005/86/INF.8.

⁴⁴⁶ United Nations, *Treaty Series*, vol. 1869, p. 299 (annex I C).

⁴⁴⁷ WT/L/641.

⁴⁴⁸ United Nations, *Treaty Series*, vol. 1869, p. 401 (annex 2).

- (iv) United States—Continued suspension of obligations in the European Communities—Hormones dispute (complaint by the European Communities) WT/DS320;
- (v) Canada—Continued suspension of obligations in the European Communities—Hormones dispute (complaint by the European Communities) WT/DS321;
- (vi) United States—Measures relating to zeroing and sunset reviews, (complaint by Japan) WT/DS322;
- (vii) Japan—Import quotas on dried laver and seasoned laver (complaint by the Republic of Korea) WT/DS323;
- (viii) Egypt—Anti-dumping duties on matches from Pakistan (complaint by Pakistan) WT/DS327).

During 2005, the Dispute Settlement Body adopted panel and Appellate Body reports on the following cases:

- (i) European Communities—Protection of trademarks and geographical indications for agricultural products and foodstuffs, complaints by the United States (WT/DS174) and Australia (WT/DS290) (panel reports);
- (ii) European Communities—Export subsidies on sugar, complaints by Australia (WT/DS265), Brazil (WT/DS266) and Thailand (WT/DS283) (panel and Appellate Body reports);
- (iii) United States—Subsidies on upland cotton, complaint by Brazil (WT/DS267) (panel and Appellate Body reports);
- (iv) European Communities—Customs classification of frozen boneless chicken cuts, complaints by Brazil (WT/DS269) and Thailand (WT/DS286) (panel and Appellate Body reports);
- (v) Republic of Korea—Measures affecting trade in commercial vessels, complaint by the European Communities (WT/DS273) (panel report);
- (vi) United States—Anti-dumping measures on oil country tubular goods from Mexico, complaint by Mexico (WT/DS282) (panel and Appellate Body reports);
- (vii) United States—Measures affecting cross-border supply of gambling and betting services, complaint by Antigua and Barbuda (WT/DS285) (panel and Appellate Body reports);
- (viii) Mexico—Definitive anti-dumping measures on beef and rice, complaint with respect to rice, complaint by the United States (WT/DS295) (panel and Appellate Body reports);
- (ix) United States—Countervailing duty investigation on dynamic random access memory semiconductors from Korea, complaint by the Republic of Korea (WT/DS296) (panel and Appellate Body reports);
- (x) European Communities—Countervailing measures on dynamic random access memory chips from Korea, complaint by the Republic of Korea (WT/DS299) (panel report);
- (xi) European Communities—Measures affecting trade in commercial vessels, complaint by the Republic of Korea (WT/DS301) (panel report);